

# **CON APPLICATION**

for 46 ALF Beds

Brookdale Living Communities of Missouri – CC, LLC

and

KG Missouri - CC Owner, LLC

Project #4463RS

Submitted to Missouri Health Facilities Review Committee

December 24, 2009



Certificate of Need Program

**NEW OR ADDITIONAL LONG TERM CARE BED APPLICATION\***

Applicant's Completeness Checklist and Table of Contents

Project Name The Hallmark at Creve Coeur

No. #4463 RS

Project Description Current IL retirement community to convert 40 existing units (21,862) into 46 ALF beds.

Done Page N/A Description of CON Rulebook Contents

**Divider I. Application Summary:**

- ☒ 1 ☐ 1. Applicant Identification and Certification (Form MO 580-1861).
- ☒ 2 ☐ 2. Representative Registration (Form MO 580-1869).
- ☒ 3-4 ☐ 3. Proposed Project Budget (Form MO 580-1863) and detail sheet.

**Divider II. Proposal Description:**

- ☒ 5-6 ☐ 1. Provide a complete detailed project description.
- ☒ 7-9 ☐ 2. Provide a legible city or county map showing the exact location of the proposed facility.
- ☒ 10-11 ☐ 3. Provide a site plan for the proposed project.
- ☒ 12 ☐ 4. Provide preliminary schematic drawings for the proposed project.
- ☒ 13-15 ☐ 5. Provide evidence that architectural plans have been submitted to the DHSS.
- ☒ 16 ☐ 6. Provide the proposed gross square footage.
- ☒ 17-49 ☐ 7. Document ownership of the project site, or provide an option to purchase.
- ☒ 50 ☐ 8. Define the community to be served.
- ☒ 51-53 ☐ 9. Provide 2015 population projections for the 15-mile radius service area.
- ☒ 59 ☐ 10. Identify specific community problems or unmet needs the proposal would address.
- ☒ 60 ☐ 11. Provide historical utilization for each of the past three years and utilization projections through the first three years of operation of the new LTC beds.
- ☒ 61 ☐ 12. Provide the methods and assumptions used to project utilization.
- ☒ 62 ☐ 13. Document that consumer needs and preferences have been included in planning this project and describe how consumers had an opportunity to provide input.
- ☒ 63-78 ☐ 14. Provide copies of any petitions, letters of support or opposition received.

**Divider III. Service Specific Criteria and Standards:**

- ☐ 79-82 ☒ 1. For ICF/SNF beds, address the population-based bed need methodology of fifty-three (53) beds per one thousand (1,000) population age sixty-five (65) and older.
- ☒ 83 ☐ 2. For RCF/ALF beds, address the population-based bed need methodology of sixteen (16) beds per one thousand (1,000) population age sixty-five (65) and older.
- ☒ 83 ☐ 3. Document any alternate need methodology used to determine the need for additional beds such as LTCH, Alzheimer's, mental health or other specialty beds.
- ☐ 83 ☒ 4. For any proposed facility which is designed and operated exclusively for persons with acquired human immunodeficiency syndrome (AIDS) provide information to justify the need for the type of beds being proposed.

**Divider IV. Financial Feasibility Review Criteria & Standards:**

- ☒ 84-89 ☐ 1. Document that the proposed costs per square foot are reasonable when compared to the latest "RS Means Construction Cost data".
- ☒ 90-150 ☐ 2. Document that sufficient financing is available by providing a letter from a financial institution or an auditors statement indicating that sufficient funds are available.
- ☒ 151 ☐ 3. Provide Service-Specific Revenues and Expenses (Form MO 580-1865) projected through three (3) years beyond project completion.
- ☒ 152 ☐ 4. Document how patient charges were derived.
- ☒ 153 ☐ 5. Document responsiveness to the needs of the medically indigent.

\* Use for RCF/ALF, ICF/SNF and LTCH beds

**DIVIDER I – 1. Application Identification and  
Certification Form MO 580-1861**



## Certificate of Need Program

## APPLICANT IDENTIFICATION AND CERTIFICATION

(must match the <b>Letter of Intent</b> for this project, without exception)		
<b>1. Project Location</b> (attach additional pages as necessary to identify multiple project sites.)		
Title of Proposed Project The Hallmark at Creve Couer	Project Number #4463 RS	
Project Address (Street/City/State/Zip Code) One New Ballas Place, Creve Coeur, MO 63146	County Saint Louis	
<b>2. Applicant Identification</b> (information must agree with previously submitted Letter of Intent)		
<b>List All Owner(s):</b> (list corporate entity)	Address (Street/City/State/Zip Code)	Telephone Number
KG Missouri-CC Owner, LLC	111 Westwood Place, Suite 200 Brentwood, TN 37027	615-221-2250
<b>List All Operator(s):</b> (list entity to be licensed or certified)		
Brookdale Living Communities of Missouri - CC, LLC	111 Westwood Place, Suite 200, Brentwood, TN 37027	615-221-2250
<b>3. Ownership</b> (Check applicable category)		
<input type="checkbox"/> Nonprofit Corporation <input type="checkbox"/> Individual <input type="checkbox"/> City <input type="checkbox"/> District <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> County <input checked="" type="checkbox"/> Other: <u>limited liability</u>		
<b>4. Certification:</b>		
In submitting this project application, the applicant understands that:  (A) The review will be made as to the community need for the proposed beds or equipment in this application; (B) In determining community need, the Missouri Health Facilities Review Committee (Committee) will consider all similar beds or equipment within; (C) The issuance of a Certificate of Need (CON) by the Committee depends on conformance with its Rules and CON statute; (D) A CON shall be subject to forfeiture for failure to incur an expenditure on any approved project six (6) months after the date of issuance, unless obligated or extended by the Committee for an additional six (6) months; (E) Notification will be provided to the CON Program staff if and when the project is abandoned; and (F) A CON, if issued, may not be transferred, relocated, or modified except with the consent of the Committee.  We certify the information and data in this application as accurate to the best of our knowledge and belief by our representative's signature below:		
<b>5. Authorized Contact Person</b> (attach a Contact Person Correction Form if different from the Letter of Intent)		
Name of Contact Person Richard D. Watters	Title Attorney at Law	
Telephone Number 314-436-8350	Fax Number 314-621-6844	E-mail Address rdwatters@lashlybaer.com
Signature of Contact Person 		Date of Signature 12/22/09



**DIVIDER I – 2. Representative Registration  
Form MO 580-1869**



<b>(A registration form must be completed for <i>each</i> project represented)</b>	
<b>Project Name</b> The Hallmark at Creve Coeur	<b>Number</b> #4463
<i>(Please type or print legibly)</i>	
<b>Name of Representative</b> Richard D. Watters	<b>Title</b> Attorney at Law
<b>Firm/Corporation/Association of Representative (may be different from below, e.g., law firm, consultant, other)</b> Lashly & Baer, P.C.	<b>Telephone Number</b> 314-436-8350
<b>Address (Street/City/State/Zip Code)</b> 714 Locust Street, St. Louis, MO 63101	
<b>Who's interests are being represented?</b> <i>(If more than one, submit a separate Representative Registration Form for each.)</i>	
<b>Name of Individual/Agency/Corporation/Organization being Represented</b> Brookdale Living Communities of Missouri - CC, LLC d/b/a The Hallmark at Creve Coeur	<b>Telephone Number</b> 615-221-2250
<b>Address (Street/City/State/Zip Code)</b> 111 Westwood Place, Suite 200, Brentwood, TN 37027	
<b>Check one. Do you:</b>  <input checked="checked" type="checkbox"/> Support <input type="checkbox"/> Oppose <input type="checkbox"/> Neutral  <b>Other information:</b>   	<b>Relationship to Project:</b>  <input type="checkbox"/> None <input type="checkbox"/> Employee <input checked="checked" type="checkbox"/> Legal Counsel <input type="checkbox"/> Consultant <input type="checkbox"/> Lobbyist <input type="checkbox"/> Other (explain):   
I attest that to the best of my belief and knowledge the testimony and information presented by me is truthful, represents factual information, and is in compliance with §197.326.1 RSMo which says: Any person who is paid either as part of his normal employment or as a lobbyist to support or oppose any project before the health facilities review committee shall register as a lobbyist pursuant to chapter 105 RSMo, and shall also register with the staff of the health facilities review committee for every project in which such person has an interest and indicate whether such person supports or opposes the named project. The registration shall also include the names and addresses of any person, firm, corporation or association that the person registering represents in relation to the named project. Any person violating the provisions of this subsection shall be subject to the penalties specified in §105.478, RSMo.	
<b>Original Signature</b> 	<b>Date</b> 12/18/09

**DIVIDER I – 3. Proposed Project Budget**  
**Form MO 580-1863**



Certificate of Need Program

## PROPOSED PROJECT BUDGET

### Description

### Dollars

#### **COSTS:\***

1. New Construction Costs ***	\$0
2. Renovation Costs ***	432,945
<b>3. Subtotal Construction Costs (#1 plus #2)</b>	<b>\$432,945</b>
4. Architectural/Engineering Fees	\$38,500
5. Other Equipment (not in construction contract)	128,179
6. Major Medical Equipment	0
7. Land Acquisition Costs ***	0
8. Consultants' Fees/Legal Fees ***	100,000
9. Interest During Construction (net of interest earned) ***	0
10. Other Costs **** (Existing Building and Land)	4,448,502
<b>11. Subtotal Non-Construction Costs (sum of #4 through #10)</b>	<b>\$4,715,181</b>
<b>12. Total Project Development Costs (#3 plus #11)</b>	<b>\$5,148,126 **</b>

#### **FINANCING:**

13. Unrestricted Funds	\$699,624
14. Bonds	0
15. Loans	0
16. Other Methods (specify) (Existing Building and Land)	4,448,502
<b>17. Total Project Financing (sum of #13 through #16)</b>	<b>\$5,148,126 **</b>

18. New Construction Total Square Footage	0
19. New Construction Costs Per Square Foot *****	0
20. Renovated Space Total Square Footage	52,130
21. Renovated Space Costs Per Square Foot *****	8.31

\* Attach additional page(s) to provide details of how each line item was determined, including all methods and assumptions used.

\*\* These amounts should be the same.

\*\*\* Capitalizable items to be recognized as capital expenditures after project completion.

\*\*\*\* Include as Other Costs the following: other costs of financing; the value of existing lands, buildings and equipment not previously used for health care services, such as a renovated house converted to residential care, determined by original cost, fair market value, or appraised value; or the fair market value of any leased equipment or building, or the cost of beds to be purchased.

\*\*\*\*\* Divide new construction costs by total new construction square footage.

\*\*\*\*\* Divide renovation costs by total renovation square footage.

Divider I – 3

Line 2 – Renovation cost were based on architects and engineers estimates.

Line 4 – Architect – Engineering fees based on architects and engineers estimates

Line 5 – Includes signage, emergency call system, furniture and equipment based on applicant's experience

Line 8 – Consultant Fees (Estimate)

Line 10 – Other Costs (Existing Building and Land) – FMV of existing building and land derived from real estate tax assessment prorated based on square footage of project

## DIVIDER II – 1. Project Description

**State of Missouri  
CON Application  
Brookdale Senior Living  
The Hallmark of Creve Coeur**

**Divider-II Proposal Description:**

**1. Provide a complete detailed project description.**

The Hallmark Creve Coeur ("The Hallmark") is a 6-story, 218 unit Independent Living Retirement Community that is now 7 ½ years old. It is owned by KG Missouri-CC Owner, LLC and operated by Brookdale Living Communities of Missouri-CC, LLC, both wholly owned subsidiaries of Brookdale Senior Living Inc., one of the largest senior housing companies in the country. Brookdale Senior Living operates all of its communities under the mission of *Enriching the lives of those we service with compassion, respect, excellence and integrity.*

Recently the State of Missouri has required The Hallmark to discharge several residents who required Assisted Living care. The purpose of this project is to license enough beds at Hallmark to enable Hallmark to provide continuing care of it's existing independent living residents.

The 1<sup>st</sup> floor of The Hallmark has 40-units including the 29-unlicensed Supportive Living units on the south wing and 11-units on the north wing of the building. The Hallmark proposes to convert these 40 units into 46 ALF beds to enable The Hallmark to continue to serve their residents as their need for assistance grows

The Hallmark's physical building allows a unique opportunity to promote a community atmosphere that includes both independent living and assisted living residents. In other senior living communities, there is a physical and even a psychological separation between the two areas of care. Sometimes the separation is simply "double doors" and other times it is different buildings altogether that keep independent living and assisted living residents apart. The Hallmark's community atmosphere allows all residents to retain their friendships as well as their dignity should they need assisted living care. Although assisted living apartments would be located on the first floor, all residents could use the amenities located there (convenience store, beauty shop, doctor's office, exercise room, etc.)

The 1<sup>st</sup> floor of the building proposed as Assisted Living is complete with the following features and amenities for the convenience of the residents:

- private dining room,
- living room area,
- activity room,
- general store,
- therapy clinic,

- outside deck/patio with a view of the lake,
- gathering area called the Piazza provides a place to gather, relax and socialize,
- beauty salon,
- health center,
- activities manager's office ensuring the highest level of stimulation for residents,
- bank.

In addition to functionality, all features and amenities offer a high quality homelike environment that would enhance the quality of life that residents deserve as they continue to age in place.

Past residents of The Hallmark have had to leave their units due to their need for assisted living services. Adding 46 Assisted Living beds would allow residents to continue to age in place and allow them to remain at The Hallmark.

The Hallmark expects to be able to fill the 46 beds with it's own residents as they continue to age in place and prevent residents from experiencing the trauma of moving out of their home when they need assisted living services.

Assisted Living would give "peace of mind" to prospects and residents because when they choose The Hallmark's independent living apartments, they know that they will have assisted living care available to them if and when it's needed. It is a difficult move for most seniors to leave the house that they love and where they raised their family. When they make a decision to come to an independent living community, they want to know that they can remain there and not have to move again the first time they are sick.

Assisted living at the Hallmark would also allow current residents to access financial assistance through their individual long term care insurance policies. In the past, residents have had to move out because they couldn't access the benefits provided them through their LTC policies. In the past, when economic times were better, Hallmark residents bypassed their policies so they could stay at The Hallmark which they and their families considered home.

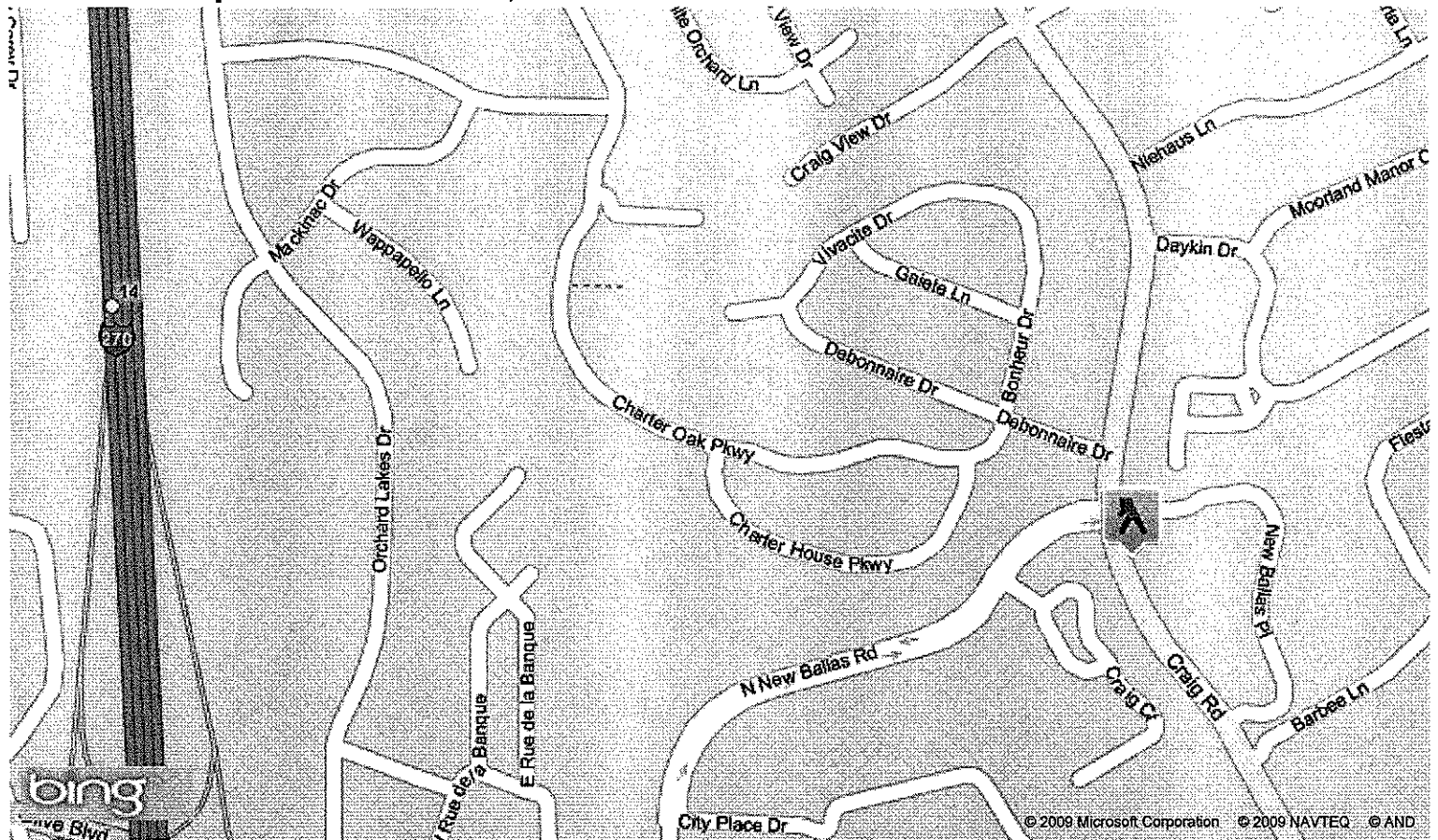
Current residents who age in place could move to the Assisted Living area at The Hallmark, if needed, and would not have to leave the community and the friendships that they have developed with other residents. This flow between the two levels of care represents a significant social and emotional benefit to the residents and to The Hallmark staff who together build relationships which promotes a wonderful quality of life.



## DIVIDER II – 2. County Maps

MAP RESULTS

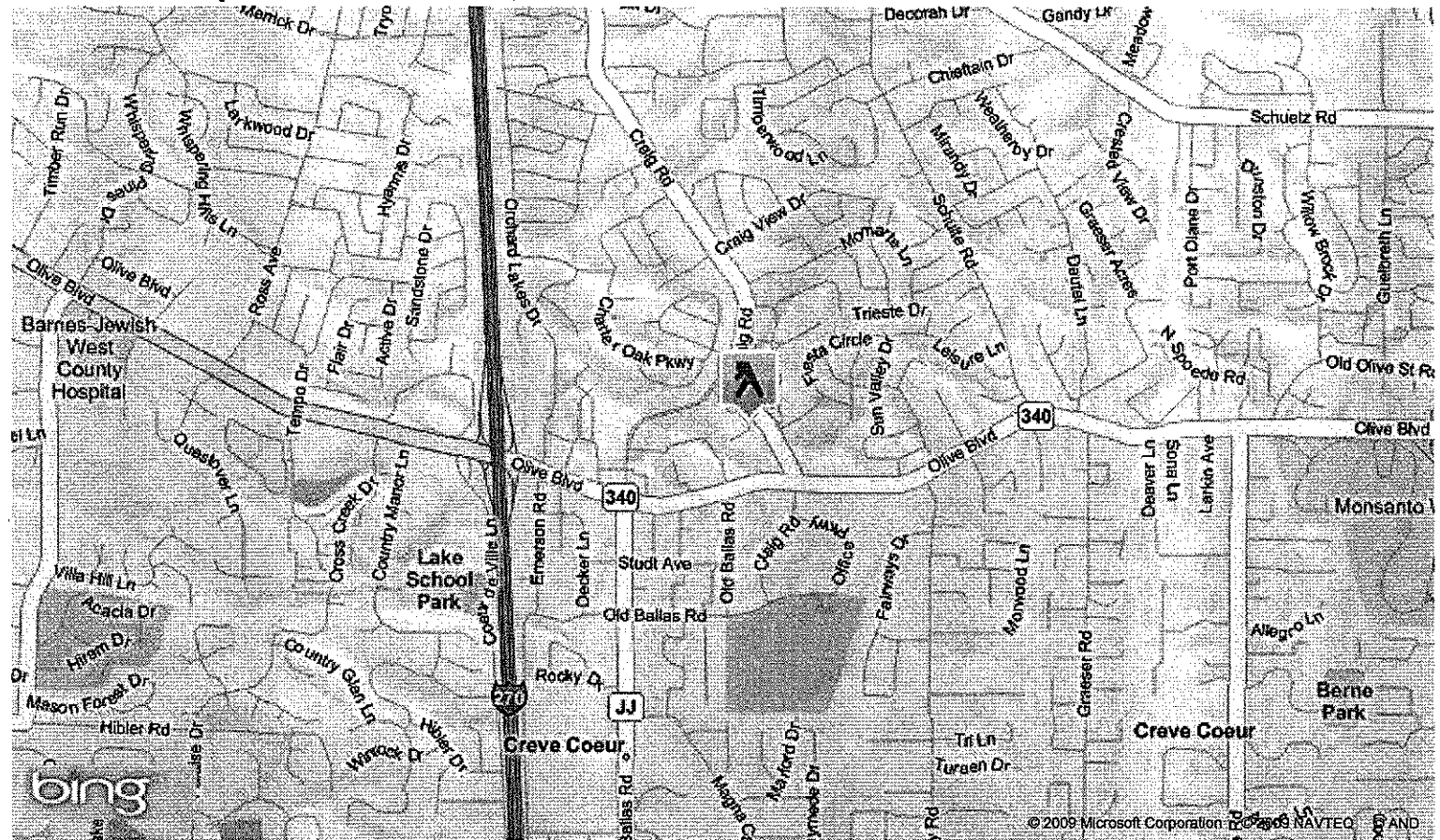
1 new ballas place Creve Coeur, MO



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## MAP RESULTS

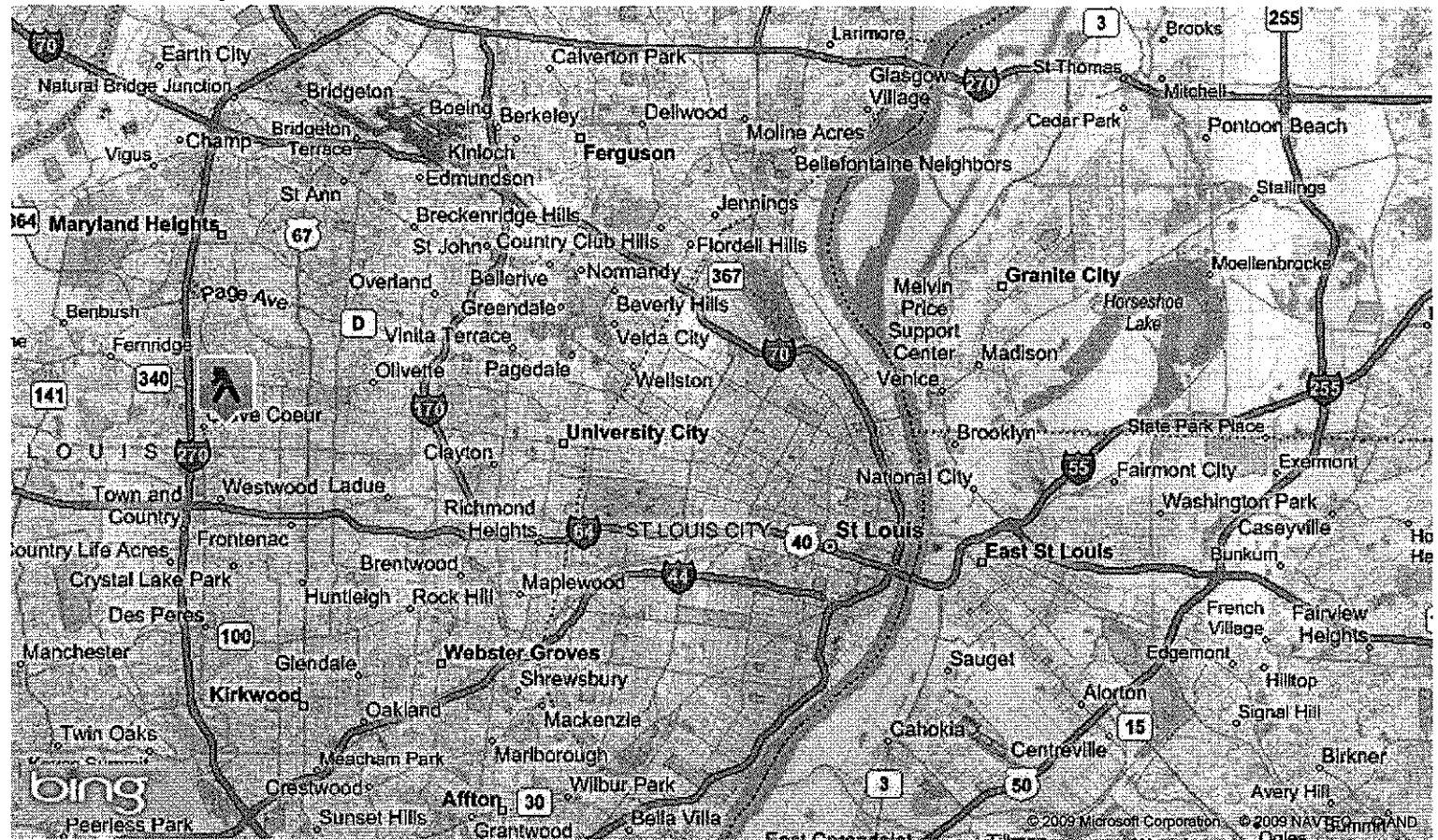
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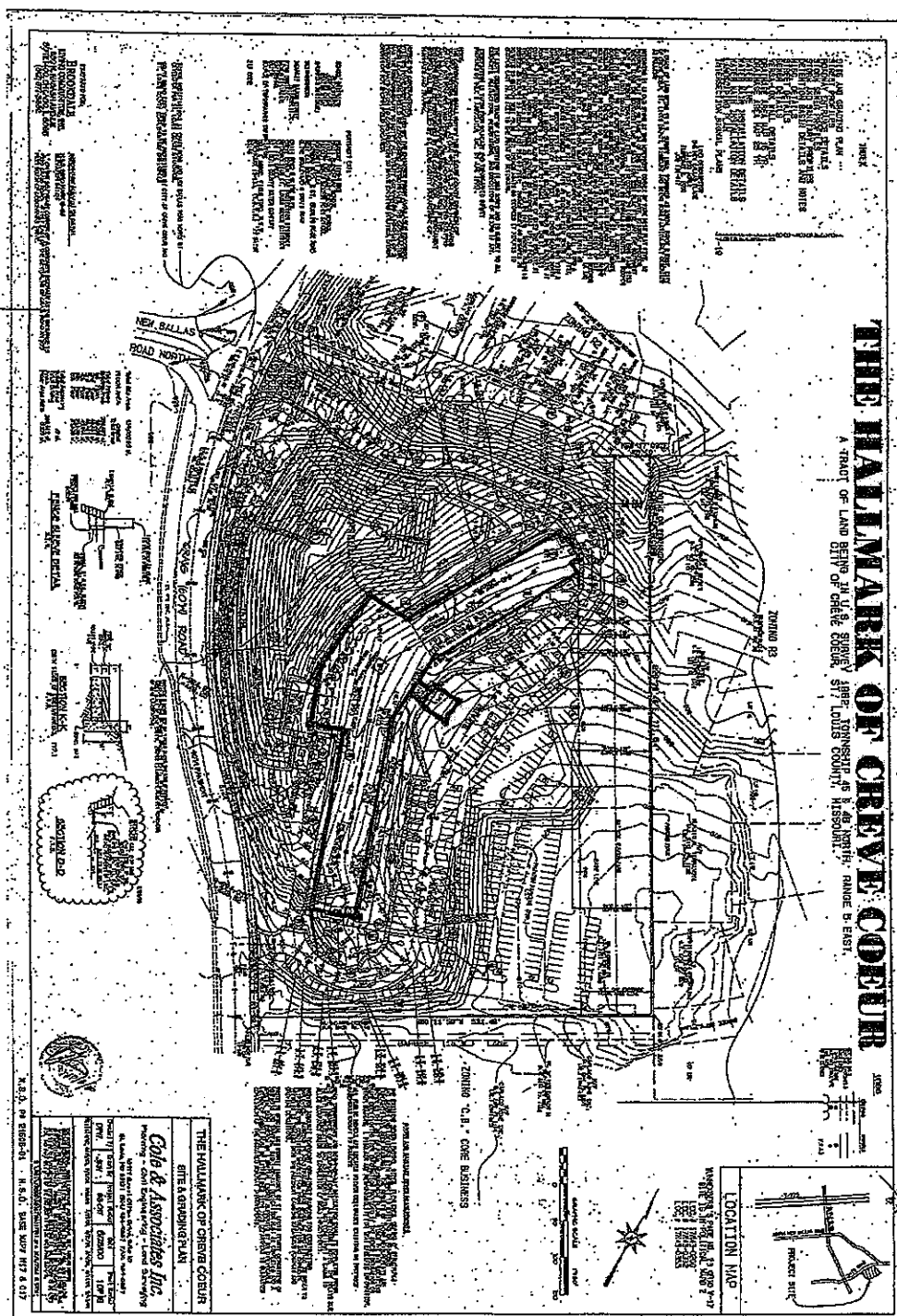
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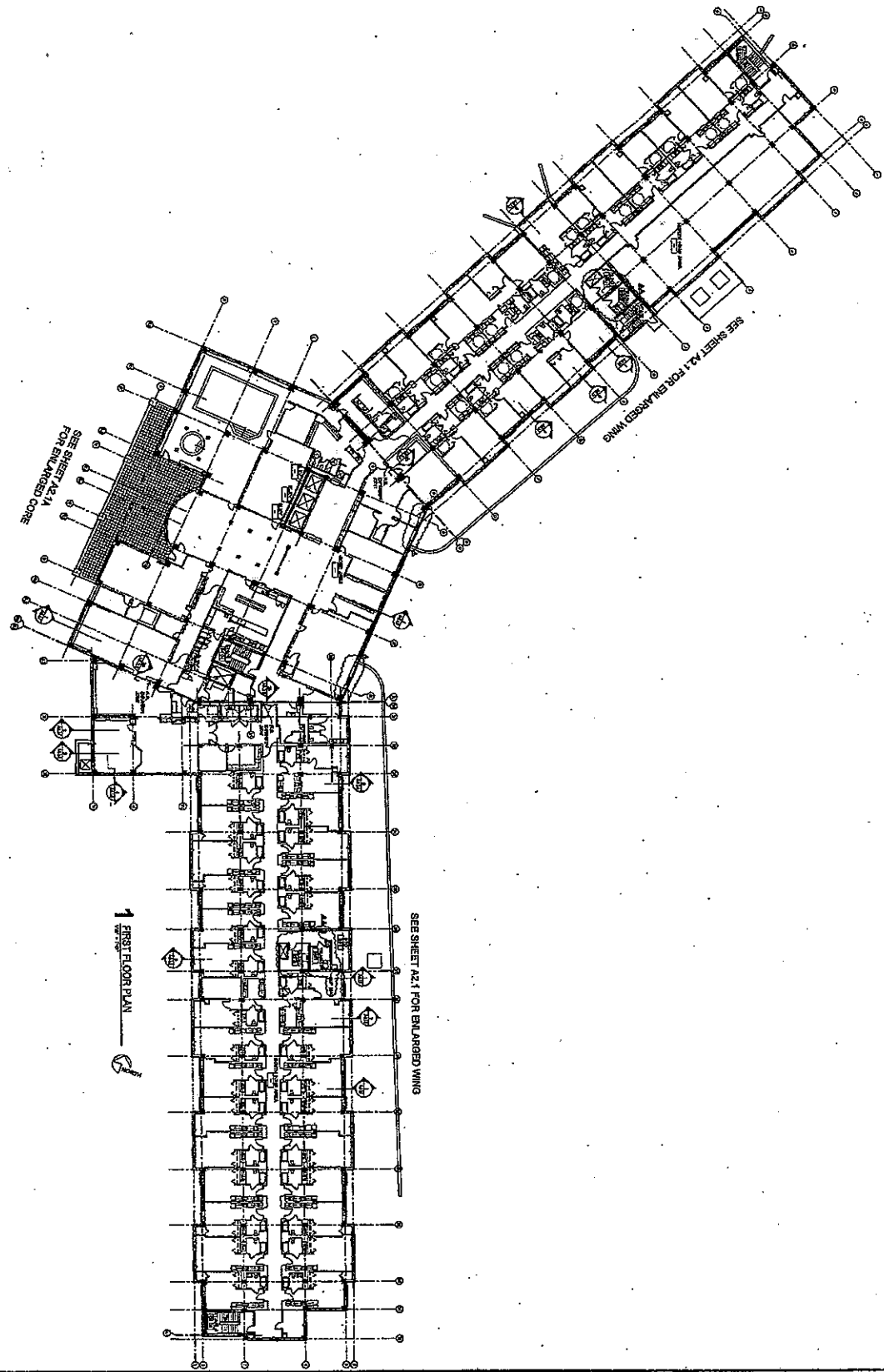
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## DIVIDER II – 3. Site Plan





NO.	DATE	DESCRIPTION
1	06-26-00	ISSUED FOR PERMIT
2	06-26-00	ISSUED FOR PERMIT
3	06-26-00	ISSUED FOR PERMIT
4	06-26-00	ISSUED FOR PERMIT
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100	06-26-00	ISSUED FOR PERMIT

**Building Shell Permit Set (6-26-00)**  
 The Hallmark of Creve Coeur  
 for  
**BROOKDALE LIVING COMMUNITIES**  
 One New Ballas Place - Creve Coeur, Missouri

**ACI BOLD INC.**  
 1715 Hidden Creek Court  
 St. Louis, Missouri 63131  
 314.821.2222 Fax  
 314.821.6222

**ACI BOLD INC.**  
 1715 Hidden Creek Court  
 St. Louis, Missouri 63131  
 314.821.2222 Fax  
 314.821.6222

**ACI BOLD INC.**  
 1715 Hidden Creek Court  
 St. Louis, Missouri 63131  
 314.821.2222 Fax  
 314.821.6222

## DIVIDER II – 4. Preliminary Schematic Drawings



# Assisted Living Conversion

The Hallmark of Creve Coeur, Missouri

Brookdale Senior Living

PGAVARCHITECTS

NOT ISSUED  
FOR CONSTRUCTION

12/22/2009

53185-00

12/22/2009

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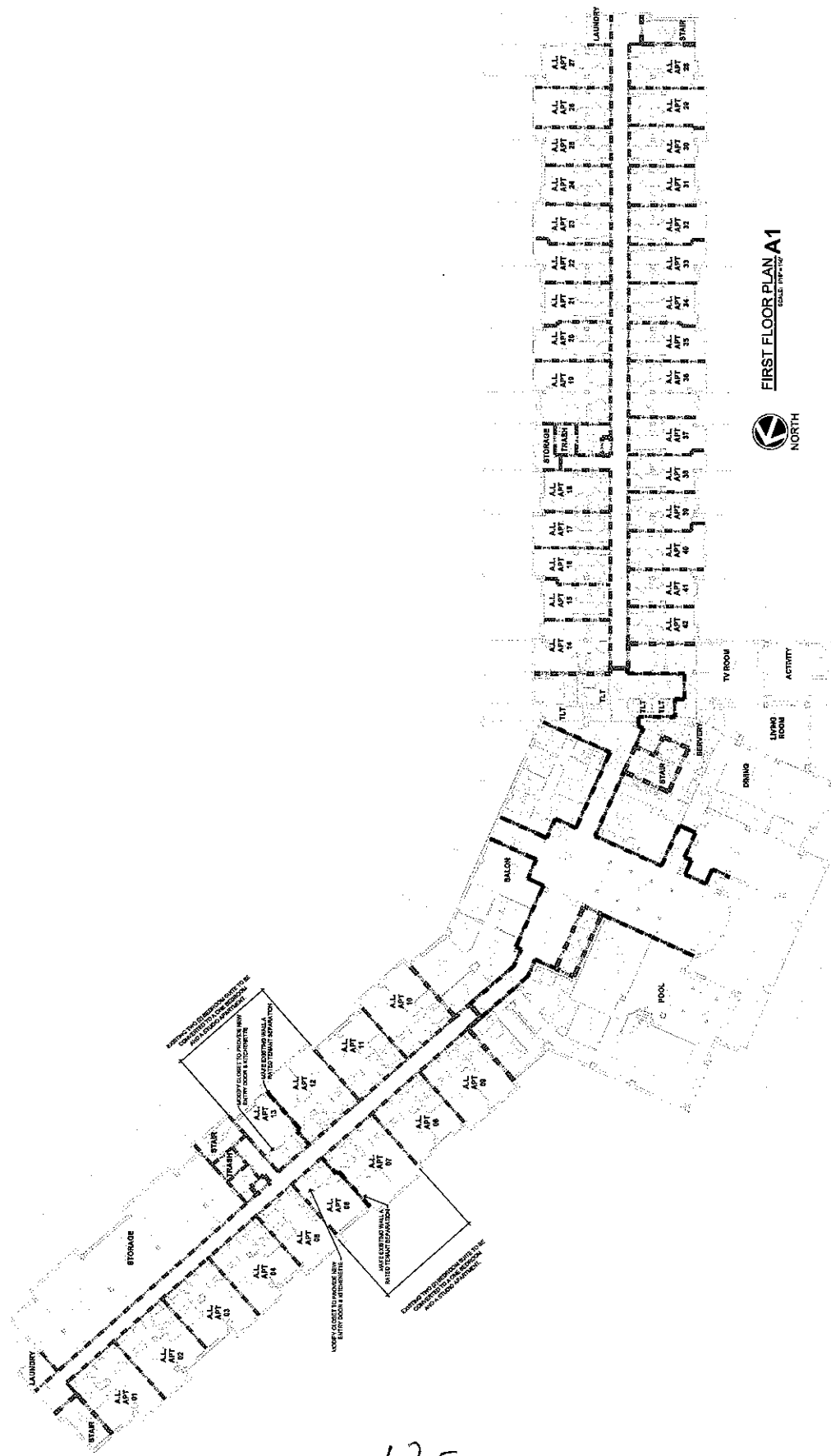
## FIRST FLOOR PLAN A1

SCALE: 1/8" = 1'-0"



CONTINUED FROM SHEET A2  
SPECIAL NOTE: THIS PLAN IS A REVISION OF THE PREVIOUS EDITION. ALL CHANGES ARE INDICATED BY A RED LINE. THE PREVIOUS EDITION IS NOT TO BE USED FOR CONSTRUCTION.

12/22/2009  
53185-00



-12-

**DIVIDER II – 5. Evidence that Architectural Plans  
have been submitted to DHSS**



**B R O O K D A L E**  
**SENIOR LIVING**

December 23, 2009

**VIA FEDERAL EXPRESS**

Missouri Department of Health and Senior Services  
3418 Knipp Drive, Suite F  
Jefferson City, MO 65109  
Attn: Long Term Care Licensing

**RE: The Hallmark at Creve Coeur**

To Whom It May Concern:

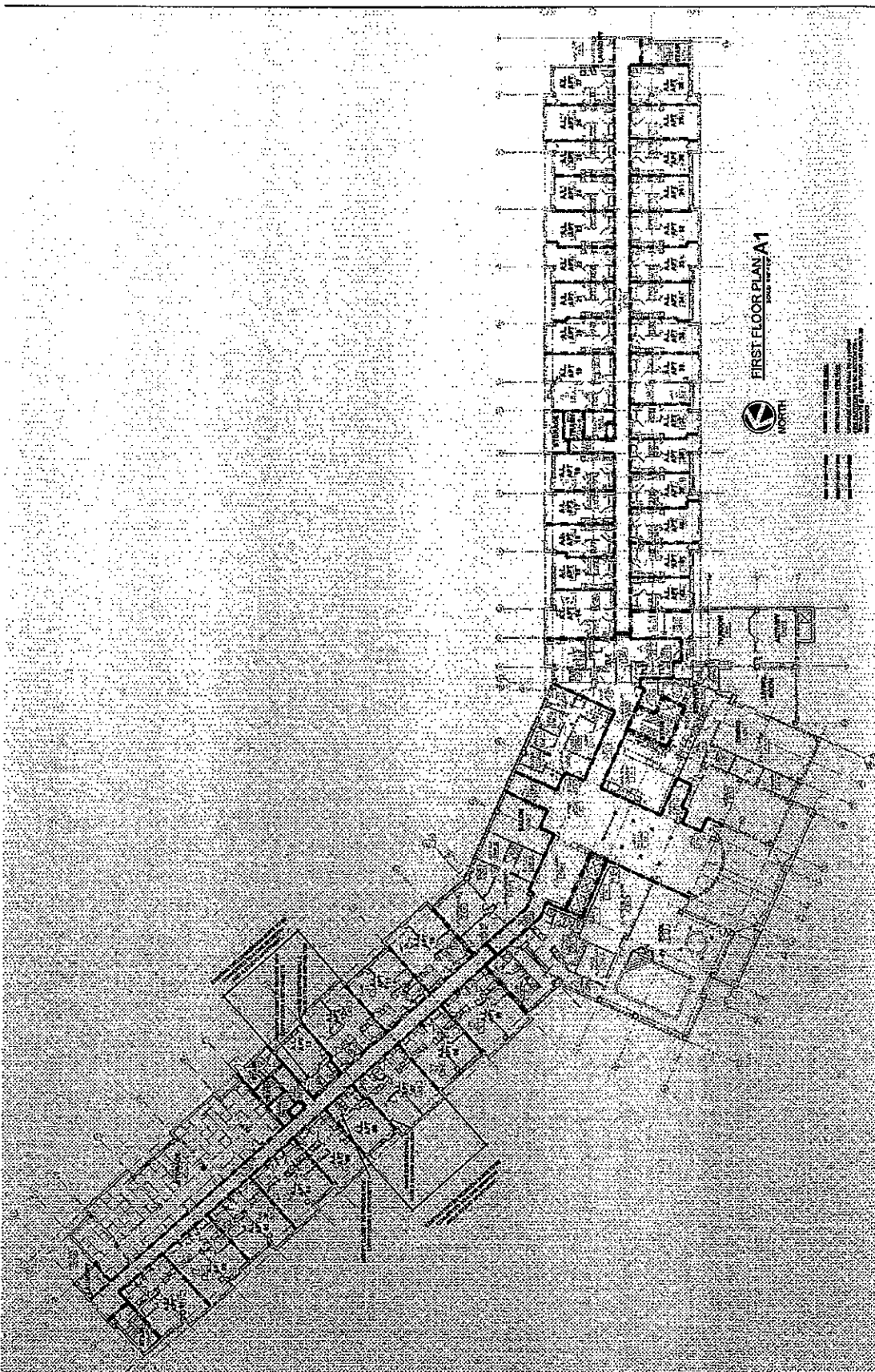
Pursuant to the CON application requirements, please find enclosed the architectural plans for The Hallmark of Creve Coeur ("The Hallmark") located at One New Ballas Place, Creve Coeur, MO 63146. The Hallmark is currently an Independent Living Retirement Community. We would like to convert 40 units into 46 ALF beds. Our Development team is working closely with Dave Worthington with PGAV Architects. His contact information is as follows:

Dave Worthington  
PGAVARCHITECTS  
1900 W. 47th Place Suite 100  
Westwood, KS 66205  
p: 913.362.6500  
f: 913.362.6504  
[www.pgav.com](http://www.pgav.com)

Thank you for your assistance with this matter. Please do not hesitate to contact me if you have any questions or if you need any additional information.

Thank you,

Lynette Kelecich  
Paralegal/Regulatory Specialist



From: Origin ID: GYYA (312) 977-3702  
 Lynette Kelecich  
 Brookdale Senior Living  
 330 North Wabash Ave  
 Suite 1400  
 Chicago, IL 60611



Ship Date: 23DEC09  
 ActWgt: 0.5 LB  
 CAD: 100340288/INET9090  
 Account#: S \*\*\*\*\*

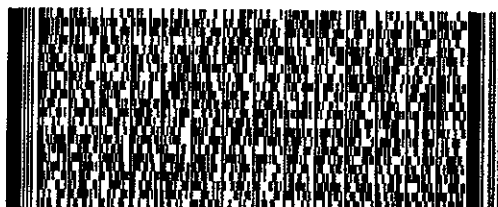
Delivery Address Bar Code



SHIP TO: (312) 977-3702 BILL SENDER  
**Long Term Care Licensing**  
**MO Dept of Health and Senior Svc**  
**3418 KNIPP DR STE F**

Ref # Notes  
 Invoice # 500-  
 PO # 02009  
 Dept # N/A

**JEFFERSON CITY, MO 65109**

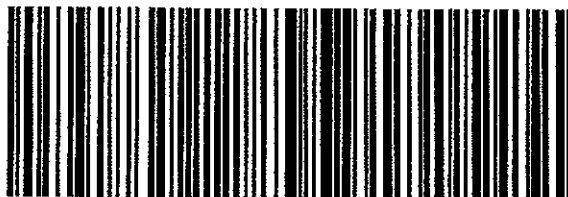


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**TUE - 29DEC AA**  
**EXPRESS SAVER**

**SH JEFA**

**65109**  
**MO-US**  
**STL**



**After printing this label:**

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

**Warning:** Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on [fedex.com](http://fedex.com). FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

## **DIVIDER II – 6. Proposed Gross Square Footage**

Hallmark Creve Coeur

Proposed Gross Square Footage of Assisted Living Project:

52,130

DIVIDER II – 7. Documentation of ownership of  
projected site.



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**Title of Document:** Deed of Trust, Security Agreement and Assignment of Rents

**Date of Document:** March 30, 2005

**\*Borrower/grantor:** KG MISSOURI-CC OWNER, LLC, a Delaware limited liability company

**\*Lender/grantee:** Guaranty Bank, a federal savings bank (as agent for certain Lenders) and the Lenders

**Grantee(s) Mailing Address:** 8333 Douglas Avenue, Suite 1100, Dallas, Texas 75201

**Address and Legal Description:** One New Ballas Place, Creve Coeur, MO 63146  
See Exhibit A attached hereto for legal description

**Reference Book and Page(s)** not applicable

**\*FOR INDEXING PURPOSES ONLY**

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THIS INSTRUMENT SECURES, AMONG OTHER THINGS, FUTURE ADVANCES AND FUTURE OBLIGATIONS PURSUANT TO, AND IS TO BE GOVERNED BY THE PROVISIONS OF, SECTION 443.055 OF THE REVISED STATUTES OF MISSOURI. THE TOTAL PRINCIPAL AMOUNT OF THE FUTURE ADVANCES AND FUTURE OBLIGATIONS THAT MAY BE SECURED HEREBY IS \$364,000,000.

**DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS**

This DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS (as the same may be supplemented, modified, amended or restated from time to time, this "Security Instrument") is executed effective as of the 30 day of March, 2005, by KG MISSOURI-CC OWNER, LLC, a Delaware limited liability company ("Borrower"), whose mailing address is c/o Brookdale Living Communities, Inc. 330 North Wabash Avenue, Suite 1400 Chicago, Illinois 60611, for the benefit of GUARANTY BANK, a federal savings bank ("Agent"), whose mailing address is 8333 Douglas Avenue, Suite 1100, Dallas, Texas 75225, Attn: Senior Housing Lending Division, as Agent for the Lenders under the Loan Agreement (as defined below) and the Lenders whose mailing addresses are GUARANTY BANK, a federal savings bank, 8333 Douglas Avenue, Suite 1100, Dallas, Texas 75225, Attn: Senior Housing Lending Division, GMAC COMMERCIAL MORTGAGE CORPORATION, 200 Witmer Road, Horsham, PA 19044, and GMAC COMMERCIAL MORTGAGE BANK, 6955 Union Bank Center, Suite 336, Midvale, Utah 84047. This Security Instrument (a) is executed and delivered under that certain Loan Agreement of even date herewith among Borrower, Agent, and the Lenders (herein so called) referred to therein (as the same from time to time may be supplemented, modified, amended or restated, herein called the "Loan Agreement") which provides for a loan from Lenders to Borrower and certain other borrowers referred to therein (the "Other Borrowers") in the aggregate amount of ONE HUNDRED EIGHTY-TWO MILLION AND NO/100 DOLLARS (\$182,000,000.00), subject to the terms and conditions set forth therein, and (b) is one of the "Security Instruments" as defined therein. Reference is made to the Loan Agreement for the meanings assigned to capitalized terms used and not defined herein. For and in consideration of the sum of Ten Dollars (\$10.00) to Borrower in hand paid by FORD R. NELSON, JR., Trustee, of Jackson County, Missouri ("Trustee"), whose address is 2345 Grand Blvd., Suite 2000, Kansas City, Missouri, 64108, for the benefit of Agent and the Lenders, in order to secure the payment of the indebtedness hereinafter referred to and the performance of the obligations, covenants, agreements and undertakings of Borrower hereinafter described, Borrower does hereby GRANT, BARGAIN AND SELL, CONVEY, CONFIRM AND WARRANT, IN TRUST WITH POWER OF SALE to the Trustee the real estate situated in the County of St. Louis and State of Missouri described in Exhibit A attached hereto and made a part hereof (the "Land"), together with (i) all the buildings and other improvements now on or hereafter located thereon; (ii) all materials, equipment, fixtures or other property whatsoever now or hereafter attached or affixed to or installed in said buildings and other improvements, including, but not limited to, all heating, plumbing, lighting, water heating, cooking, laundry, refrigerating, incinerating, ventilating and air conditioning equipment, disposals, dishwashers,

refrigerators and ranges, recreational equipment and apparatus, utility lines and equipment (whether owned individually or jointly with others), sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, engines, machines, elevators, motors, cabinets, shades, blinds, partitions, window screens, screen doors, storm windows, awnings, drapes, and rugs and other floor coverings, and all fixtures, accessions and appurtenances thereto, and all renewals or replacements of or substitutions for any of the foregoing, all of which materials, equipment, fixtures and other property are hereby declared to be permanent fixtures and accessions to the freehold and part of the realty conveyed herein as security for the indebtedness herein mentioned; (iii) all easements and rights of way now and at any time hereafter used in connection with any of the foregoing property or as a means of ingress to or egress from said property or for utilities to said property; (iv) all interests of Borrower in and to any streets, ways, alleys and/or strips of land adjoining said land or any part thereof; and (v) all rights, estates, powers and privileges appurtenant or incident to the foregoing.

TO HAVE AND TO HOLD the foregoing property (the "Real Property") unto the Trustee and its successors or substitutes in this trust and to its successors and assigns, IN TRUST for the benefit of Agent and Lenders, however, upon the terms, provisions and conditions herein set forth.

In order to secure the payment of the indebtedness hereinafter referred to and the performance of the obligations, covenants, agreements and undertakings of Borrower hereinafter described, Borrower hereby grants to Agent and the Lenders a security interest in all goods, equipment, furnishings, fixtures, furniture, chattels and personal property of whatever nature owned by Borrower now or hereafter located or used in and about the building or buildings or other improvements now erected or hereafter to be erected on the Land, or otherwise located on the Land, and all fixtures, accessions and appurtenances thereto, and all renewals or replacements of or substitutions for any of the foregoing, all building materials and equipment now or hereafter delivered to said premises and intended to be installed therein, all security deposits (whether cash, one or more letters of credit, bonds or other form of security) and advance rentals under Leases now or at any time hereafter covering or affecting any of the Property (as hereinafter defined) and held by or for the benefit of Borrower, all monetary deposits which Borrower has been required to give to any public or private utility with respect to utility services furnished to the Property, all rents and other amounts from and under Leases of all or any part of the Property, all issues, profits and proceeds from all or any part of the Property, all proceeds (including premium refunds) of each policy of insurance relating to the Property, including, without limitation, any Net Proceeds Rent Loss Proceeds and any Additional Funds, all proceeds from the taking of the Property or any part thereof or any interest therein or right or estate appurtenant thereto by eminent domain or by purchase in lieu thereof, all amounts deposited in the Tax and Insurance Escrow Account and Capital Improvement Account, if any, all amounts deposited in Borrower's operating accounts, all contracts related to the Property, all accounts arising from the operation of the Property, all rights to payment from state or federal programs, boards, bureaus or agencies and rights to payment from residents, patients, private insurers and others arising from the operation of the Property to the extent assignable or that a security interest therein may be granted as a matter of applicable law and under the terms thereof, all beds, linen, televisions, telephones, cash registers, computers, lamps, glassware, rehabilitation equipment, restaurant and kitchen equipment, all inventories of food, beverage and

other comestibles held by Borrower for sale or use at or from the Property, soap, paper supplies, medical supplies, drugs and all other such goods, wares and merchandise held by Borrower for sale to or for consumption by residents, guests or patients of the Property and all such other goods returned to or repossessed by Borrower, all rights of Borrower arising from the operation of the Property for the payment of goods sold or leased or for services rendered, all rent and other payments of whatever nature from time to time payable pursuant to all present and future leases, license agreements, service agreements, resident agreements and other occupancy or use agreements now or hereafter in force covering all or any portion of the Property, all money, funds, accounts, instruments, documents, general intangibles (including trademarks, trade names and symbols owned by Borrower and used in connection therewith), all notes or chattel paper arising from or related to the Property, all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Property to the extent assignable or that a security interest therein may be granted as a matter of applicable law and under the terms thereof, all plans, specifications, maps, surveys, reports, architectural, engineering and construction contracts, books of account, insurance policies and other documents, of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale or operation of the Property, all master agreements published by the International Swaps and Derivatives Association, Inc., or any other master agreement, together with any related confirmations and schedules, which evidence a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, cap, collar or floor transaction, currency swap, cross-currency rate swap, swap option currency option or any other, similar transaction or any combination of the foregoing, relating to Borrowers' ability to "cap" or "hedge" the variable interest rates, all proceeds and other amounts paid or owing to Borrower under or pursuant to any and all contracts and bonds relating to the construction, erection or renovation of the Property, all oil, gas and other hydrocarbons and other minerals produced from or allocated to the Property and all products processed or obtained therefrom, the proceeds thereof, and all accounts and general intangibles under which such proceeds may arise, together with any sums of money that may now or at any time hereafter become due and payable to Borrower by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and future oil, gas and mining leases covering the Property or any part thereof (all of the property described in this Section collectively called the "Collateral") and all proceeds of the Collateral. The Real Property and the Collateral are collectively called the "Property".

## ARTICLE I.

### Secured Indebtedness

1.1 Secured Indebtedness. This Security Instrument is made to secure and enforce the payment and performance of the following notes, obligations, indebtedness and liabilities:

- (a) all indebtedness and other obligations now or hereafter incurred by arising pursuant to the provisions of the Loan Agreement;

(b) each Note delivered by Borrower and Other Borrowers to Lenders pursuant to the Loan Agreement, including, without limitation the Notes listed on Schedule 1 attached hereto, including, without limitation, all principal, interest and charges, attorneys' fees, default interest, and late charges, both principal and interest being payable as therein provided and being finally due and payable three (3) years after the date thereof (subject to extension as provided in the Loan Agreement), together with all amendments, modifications, renewals and extensions thereof, and all other notes given in substitution therefor or in modification, increase, renewal or extension thereof, in whole or in part (such notes and all amendments, modifications, renewals and extensions thereof and all other notes given in substitution therefor or in modification, increase, renewal or extension thereof, in whole or in part, being herein called the "Note");

(c) all loans and future advances made by Bank Parties to Borrower and Other Borrowers and all other debts, obligations and liabilities of every kind and character of Borrower and Other Borrowers now or hereafter existing in favor of Bank Parties (including all indebtedness incurred or arising pursuant to the provisions of this Security Instrument or any other Loan Documents) whether such debts, obligations or liabilities be direct or indirect, primary or secondary, joint or several, fixed or contingent, and whether originally payable to Bank Parties or to a third party and subsequently acquired by Bank Parties and whether such debts, obligations and liabilities are evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty or otherwise, it being contemplated that Borrower and Other Borrowers may hereafter become indebted to Bank Parties in further sum or sums;

(d) performance of every obligation of Borrower and Other Borrowers contained in the Loan Documents; and

(e) performance of every obligation of Borrower and Other Borrowers contained in any agreement, document, or instrument now or hereafter executed by Borrower or Other Borrowers reciting that the obligations thereunder are secured by this Security Instrument.

It is understood and agreed that this Security Instrument secures future advances and future obligations. The total amount of obligations and advances secured hereby may decrease or increase from time to time, but at no time shall the total principal amount of obligations and advances secured hereby, not including sums expended or incurred for the reasonable protection of the security interest created in the Property or for other purposes specified in Section 443.055(3) of the Missouri Revised Statutes, exceed the principal amount of \$364,000,000. This Security Instrument is governed by Section 443.055 of the Missouri Revised Statutes. The indebtedness referred to in this Section is hereinafter sometimes called the "secured indebtedness" or the "indebtedness secured hereby."

1.2 Cross Collateralization. Borrower acknowledges that the liens, assignments, security interests and other rights on and against the Property are cross-collateralized with the liens, assignments, security interests on and against the collateral provided in the other Loan

Documents to pay all indebtedness and obligations of the Borrower and the Other Borrowers under the Loan Documents.

## ARTICLE II.

### Representations, Warranties and Covenants

2.1 Representations, Warranties and Covenants. In addition to representations, warrants and covenants in Loan Agreement or other Loan Documents, Borrower represents, warrants and covenants as follows:

(a) Title and Authority. Borrower is the lawful owner of good and marketable title to the Property and has good right and authority to grant, bargain, sell, convey, transfer, assign and mortgage the Real Property and to grant a security interest in the Collateral. Borrower does not do business with respect to the Property under any trade name except The Hallmark of Creve Coeur.

(b) Permitted Encumbrances. The Property is free and clear from all liens, security interests and encumbrances except (i) the lien and security interest evidenced hereby, (ii) the encumbrances set forth in Schedule B of the Loan Title Policy, (iii) future utility easements necessary for the operation of the Property, (iv) Leases/Resident Agreements approved by Agent to the extent required under Loan Documents and (v) property taxes not yet due and payable (the "Permitted Encumbrances") (excluding any mechanic's or materialmen's liens). There are no mechanic's or materialmen's liens, lienable bills or other claims constituting or that may constitute a lien on the Property, or any part thereof.

(c) No Financing Statement. There is no financing statement covering all or any part of the Property or its proceeds on file in any public office except in favor of Agent and Lenders.

(d) Location of Collateral. All tangible Collateral is located on the property described in Exhibit A attached hereto and made a part hereof.

(e) No Homestead. No portion of the Property is being used as Borrower's residential homestead and Borrower waives any homestead rights it may have in the Property.

(f) Compliance with Covenants and Laws. The Property and the intended use thereof by Borrower comply with (and no notices of violation have been received in connection with) all Requirements. Borrower shall at all times comply with all present or future Requirements affecting or relating to the Property and/or the use thereof by Borrower. Upon request and to the extent available, Borrower shall furnish to Agent proof of compliance with the Requirements. Borrower shall not use or permit the use of the Property, or any part thereof, for any illegal purpose. "Requirements" shall mean all applicable laws, ordinances, orders, determinations and court decisions, covenants,

conditions and restrictions (including private restrictive covenants) and other requirements relating to land and building design and construction, use and maintenance, that may now or hereafter pertain to or affect the Property or any part thereof or the use of the Property, including, without limitation, planning, zoning, subdivision, environmental, air quality, flood hazard, fire safety, laws relating to the disabled (including but not limited to The Americans with Disabilities Act of 1990, 42 U.S.C. §§12101 et seq. and regulations thereunder [the "ADA"] and/or the Fair Housing Amendments Act of 1988, 42 U.S.C. §§3601 et seq., and regulations thereunder [the "FHAA"]], building, health, fire, traffic, safety, wetlands, coastal and other governmental or regulatory rules, laws, ordinances, statutes, codes and requirements applicable to the Property, without reliance upon grandfather provisions or adjacent or other properties. Borrower has obtained all requisite zoning, utility, building, health and operating permits from the governmental authority or municipality having jurisdiction over the Property to comply with any of the foregoing requirements.

(g) Condition of Property. The Property is served by electric, gas, storm and sanitary sewers, sanitary water supply, telephone and other utilities required for the use thereof in its current use as represented by Borrower at or within the boundary lines of the Property. All streets, alleys and easements necessary to serve the Property in its current use have been completed and are serviceable and such streets have been dedicated and accepted by applicable governmental entities. The Property is in good condition and repair with no material deferred maintenance and is free from unrepaired damage caused by fire or other casualty. Borrower is aware of no material latent or patent structural or other significant defect or deficiency in the Property. Design and as-built conditions of the Property are such that no drainage or surface or other water will drain across or rest upon either the Property or land of others (except in compliance with the Requirements). None of the Property is within a flood plain except as indicated on a survey of the Property delivered to Lenders. Except as shown on the survey delivered to Agent and Lenders, none of the improvements on the Property create an encroachment over, across or upon any of the Property boundary lines, rights of way or easements, and no buildings or other improvements on adjoining land create such an encroachment.

(h) Warranty. Borrower will warrant and forever defend the title to the Property against the claims of all persons whomsoever lawfully claiming or to claim the same or any part thereof, subject to the Permitted Encumbrances.

2.2 Covenants and Agreements. So long as the secured indebtedness or any part thereof remains unpaid, in addition to covenants in Loan Agreement and other Loan Documents, Borrower covenants and agrees as follows:

(a) Payment. Borrower will make prompt payment, as the same becomes due, of the Notes to which it is a party and of all installments of principal and interest thereon and of all other secured indebtedness.

(b) Existence. Borrower will continuously maintain its existence and its right and good standing to transact business in the state where the Real Property is located together with its franchises and trade names.

(c) Taxes on Note and Other Taxes. Borrower will promptly pay or contest in the same manner as a tax contest in Section 2.2(g) hereof, all income, franchise and other taxes owing by Borrower and any stamp taxes, mortgage taxes, recordation taxes or similar taxes which may be required to be paid with respect to the Note, this Security Instrument or any other instrument evidencing or securing any of the secured indebtedness.

(d) Operation of Property. Borrower will operate the Property in a good and workmanlike manner and in accordance with all Requirements and will pay all fees or charges of any kind in connection therewith. Borrower will keep the Property occupied so as not to impair the insurance carried thereon. Borrower will not use or occupy, or allow the use or occupancy of, the Property in any manner which violates any Requirement or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases (other than in the ordinary course of Borrower's operations) the premium of, any insurance then in force with respect thereto. Borrower will comply with and use reasonable efforts to cause all occupants of the Property to comply with the ADA and/or FHAA and, if requested, shall provide Agent with copies of all plans for compliance with the ADA and/or FHAA and all surveys relating to such compliance now in Borrower's possession or obtained by Borrower during the term of the Loan (as defined in the Loan Agreement). Borrower will not initiate or permit any zoning reclassification of the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in a manner that could result in such use becoming a nonconforming use under applicable zoning ordinances or other Requirements. Borrower will not impose any restrictive covenants or encumbrances (except Permitted Encumbrances) upon the Property, execute or file any subdivision plat affecting the Property or consent to the annexation of the Property to any municipality, without the prior written consent of Agent. Borrower shall not operate the Property, or permit the Property to be operated, as a cooperative or condominium building or buildings in which the tenants or occupants participate in the ownership, control or management of the Property or any part thereof, as tenant stockholders or otherwise. Borrower shall not cause or permit any drilling or exploration for, or extraction, removal or production of, minerals from the surface or subsurface of the Property. If Borrower receives a notice or claim from any federal, state or other governmental entity pertaining to the Property, including specifically but without limitation a notice that the Property is not in compliance with any Requirement, Borrower will promptly furnish a copy of such notice or claim to Agent.

(e) Inspection. Upon reasonable advance notice, Agent and Monitoring Agent or its authorized representatives, including but not limited to third party appraisers, environmental engineers, employees of Agent and Monitoring Agent, architects and engineers, shall have the right to inspect and conduct testing on the Real Property at any time and Borrower will assist Agent and Monitoring Agent and/or said representatives in



whatever way necessary to make such inspections and/or testing. Agent and Monitoring Agent will endeavor to cause any such inspections or testing to be made without material interference of Borrower's business. In addition, Agent and Monitoring Agent, at Borrower's expense, may make or cause to be made, inspections at such other times as Agent and Monitoring Agent shall elect to (i) inspect Repairs (as defined in the Loan Agreement), (ii) inspect the repair log for the Property or (iii) examine conditions at the Real Property following an emergency or an Event of Default. In the event that such inspection reveals that further Repairs of the Property are required, Agent and Monitoring Agent shall provide Borrower with a written description of the required Repairs or other work and Borrower shall complete such Repairs or other work to the reasonable satisfaction of Agent and Monitoring Agent within 90 days after the receipt of such description from Agent and Monitoring Agent, or such later date as may be approved by Agent in its sole discretion.

(f) Debts for Construction. Borrower will cause all debts and liabilities of any character, including without limitation all debts and liabilities for labor, material and equipment and all debts and charges for utilities servicing the Property, incurred in the construction, maintenance, operation and development of the Property to be promptly paid, except for those being contested in good faith and in accordance with the applicable provisions of this Security Instrument.

(g) Ad Valorem Taxes. Borrower will cause to be paid prior to delinquency all taxes (which includes any payments in lieu of taxes) and assessments heretofore or hereafter levied or assessed against the Property, or any part thereof, or against the Trustee or Bank Parties for or on account of the Note or the other indebtedness secured hereby or the interest created by this Security Instrument and will furnish Agent with receipts showing payment of such taxes and assessments within 10 days prior to the applicable default date therefor; except that Borrower may in good faith, by appropriate proceedings, contest the validity, applicability, or amount of any asserted tax or assessment, and pending such contest Borrower shall not be deemed in default hereunder if (i) prior to delinquency of the asserted tax or assessment Borrower establishes an escrow acceptable to Agent adequate to cover the payment of such tax or assessment with interest, costs and penalties and a reasonable additional sum to cover possible costs, interest and penalties (which escrow shall be returned to Borrower upon payment of all such taxes, assessments, interest, costs and penalties or resolution of the contest); (ii) Borrower pays to Agent after demand therefor all costs and expenses incurred by Agent in connection with such contest; and (iii) Borrower promptly causes to be paid, or appropriately appealed, any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, promptly after such judgment becomes final; provided, however, that in any event each such contest shall be concluded and the tax, assessment, penalties, interest and costs shall be paid prior to the date any writ or order is issued under which the Property may be sold.

(h) Repair and Maintenance. Borrower will keep the Property in good order, repair, condition and appearance, causing all necessary structural and non-structural repairs, renewals, replacements, additions and improvements to be promptly made, and

will not allow any of the Property to be misused, abused or wasted or to deteriorate. Borrower will promptly replace all worn-out or obsolete fixtures or personal property covered by this Security Instrument if required to operate the Property in its current use with fixtures or personal property comparable to the replaced fixtures or personal property of comparable function and value, and will repaint the Property when needed. Notwithstanding the foregoing, Borrower will not, without the prior written consent of Agent, (i) erect any new buildings, structures or other improvements on the Property; (ii) remove from the Property any fixtures or personal property covered by this Security Instrument except such as is replaced by Borrower by an article of equal suitability and value, owned by Borrower, free and clear of any lien or security interest (except that created by this Security Instrument or otherwise permitted under the Loan Documents), (iii) make any structural or material alteration to the Property or any other alteration thereto which negatively impairs the value thereof or (iv) make any alteration to the Property involving an estimated expenditure exceeding \$50,000 except pursuant to plans and specifications approved in writing by Agent. Upon reasonable request of Agent, Borrower will deliver to Agent an inventory describing and showing the make, model, serial number and location of all fixtures and personal property used in the management, maintenance and operation of the Property with a certification by Borrower that said inventory is a true and complete schedule of all such fixtures and personal property used in the management, maintenance and operation of the Property, that such items specified in the inventory constitute all of the fixtures and personal property required in the management, maintenance and operation of the Property, and that all such items are owned by Borrower free and clear of any lien or security interest (except that created by this Security Instrument or otherwise permitted under the Loan Documents).

(i) Casualty.

(i) Borrower's Obligations. If any damage to, loss, or destruction of the Real Property occurs (any "Damage"), (A) Borrower shall promptly notify Agent and take all necessary steps to preserve any undamaged part of the Real Property and (B) Borrower shall promptly commence and diligently pursue to completion the restoration, replacement, and rebuilding of the Property as nearly as possible to its value and condition immediately prior to the Damage in accordance with plans and specifications approved by Agent ("Restoration"), subject, however, to Agent's making Net Proceeds (hereinafter defined) available for Restoration, but regardless of whether any proceeds are sufficient for Restoration. Borrower shall comply with other requirements established by Agent to preserve the security under this Security Instrument.

(ii) Agent's Rights. If any Damage occurs and some or all of it is covered by insurance, then (A) Agent may, but is not obligated to, make proof of loss if not made promptly by Borrower and Agent is authorized and empowered by Borrower to settle, adjust, or compromise any claims for the Damage; (B) each insurance company concerned is authorized and directed to make payment directly to Agent for the benefit of Lenders for the Damage; and (C) Agent may apply the insurance proceeds in any order it determines (1) to reimburse Bank

Parties for all costs related to collection of the proceeds and (2) subject to subpart (iii) of this Section and at Agent's option, to (a) payment of all or part of the secured indebtedness, whether or not then due and payable, in the order determined by Agent, provided that, if any portion of the secured indebtedness remains outstanding after this payment, the unpaid portion of the secured indebtedness shall continue in full force and effect and Borrower shall not be excused in the payment thereof; (b) the cure of any default or breach of any provision under the Loan Documents if the applicable cure period has elapsed; or (c) the Restoration. Any insurance proceeds held by Agent shall be held in an interest-bearing account for the benefit of Borrower but Agent makes no representation concerning the rate of interest. If Borrower receives any insurance proceeds for the Damage, Borrower shall promptly deliver the full amount of such proceeds to Agent, without deduction of any kind (other than the reasonable cost of collection). Notwithstanding anything in this Security Instrument or at law or in equity to the contrary, none of the insurance proceeds paid to Agent shall be deemed trust funds and Agent may dispose of these proceeds as provided in this Section. Borrower expressly assumes all risk of loss from any Damage, whether or not insurable or insured against.

(iii) Application of Proceeds to Restoration. If the Net Proceeds are less than or equal to \$500,000 and there is no Event of Default, Agent shall make the Net Proceeds available to Borrower for Restoration. If the Net Proceeds exceed \$500,000, Agent shall make the Net Proceeds available to Borrower for Restoration if: (A) there shall then be no Default; (B) Agent shall be satisfied that Restoration can and will be completed within 12 months after the Damage occurs and at least nine (9) months prior to April 1, 2008 and business interruption insurance in sufficient amounts to pay all debt service on the Note executed by Borrower as well as any other amounts required to be paid therefrom (e.g., ground lease rents) is in effect; (C) Borrower shall have entered into a general construction contract reasonably acceptable in all respects to Agent for Restoration, which contract must include provision for retainage of not less than 10% of the contract sum until final completion of the Restoration; and (D) in Agent's reasonable judgment, after Restoration has been completed the net cash flow of the Property will be sufficient to cover all costs and operating expenses of the Property, including payments due and reserves required under the Loan Documents. Notwithstanding any provision of this Security Instrument to the contrary, Agent shall not be obligated to make any portion of the Net Proceeds available for Restoration unless, at the time of the disbursement request, Agent has determined in its reasonable discretion that (y) Restoration can be completed at a cost which does not exceed the aggregate of the remaining Net Proceeds and any funds deposited or to be deposited with Agent by Borrower ("Additional Funds") and (z) the aggregate of any loss of business interruption insurance proceeds which the carrier has acknowledged to be payable ("Rent Loss Proceeds") and any funds deposited or to be deposited with Agent by Borrower are sufficient to cover all costs and operating expenses of the Real Property, including payments due and reserves required under the Loan Documents.

(iv) Disbursement of Proceeds. If Agent elects or is required to make insurance proceeds available for Restoration, Agent shall, through a disbursement procedure established by Agent, periodically make available to Borrower in installments the net amount of all insurance proceeds received by Agent after deduction of all reasonable costs and expenses incurred by Agent in connection with the collection and disbursement of such proceeds ("Net Proceeds") and, if any, the Additional Funds. The amounts periodically disbursed to Borrower shall be based upon the amounts currently due and payable under the construction contract for Restoration and Agent's receipt of (A) appropriate lien waivers, (B) a certification of the percentage of Restoration completed by an architect or engineer reasonably acceptable to Agent, and (C) title insurance protection against materialmen's and mechanic's liens (if available). At Agent's election, the disbursement of funds may be handled by a disbursing agent selected by Agent, and such agent's reasonable fees and expenses shall be paid by Borrower. The Net Proceeds, Rent Loss Proceeds, and any Additional Funds shall constitute additional security for the Loan and Borrower shall execute, deliver, file and/or record, at its expense, such instruments as Agent requires to grant to Agent and Lenders a perfected, first-priority security interest in these funds. If the Net Proceeds are made available for Restoration and (x) Borrower refuses or fails to complete the Restoration, (y) an Event of Default occurs, or (z) the Net Proceeds or Additional Funds are not applied to Restoration, then any undisbursed portion may, at Agent's option, be applied to the secured indebtedness in any order of priority, and any application to principal shall be deemed a voluntary prepayment.

(j) Condemnation.

(i) Borrower's Obligations. Borrower will promptly notify Agent of any threatened or instituted proceedings for the condemnation or taking by eminent domain of all or any portion of the Real Property including any change in any street (whether as to grade, access, or otherwise) (a "Taking"). Borrower shall, at its expense, (A) diligently prosecute these proceedings, (B) deliver to Agent copies of all papers served in connection therewith, and (C) consult and cooperate with Agent in the handling of these proceedings. No settlement of these proceedings shall be made by Borrower without Agent's prior written consent. Agent may participate in these proceedings (but shall not be obligated to do so) and Borrower will sign and deliver all instruments requested by Agent to permit this participation and to pay all of Agent's or Lenders' reasonable costs in such participation. Borrower shall promptly commence and diligently pursue to completion the Restoration as nearly as possible to its value and condition immediately prior to the Taking in accordance with plans and specifications approved by Agent, subject, however, to Agent's making the Award (hereinafter defined) available, but regardless of whether the Award is sufficient for Restoration

(ii) Agent's Rights. All condemnation awards, judgments, decrees, or proceeds of sale in lieu of condemnation ("Award") in excess of \$500,000 are

assigned and shall be paid to Agent for the benefit of Lenders. Borrower authorizes Agent to collect and receive an Award in excess of \$500,000, to give receipts for them, to accept them in the amount received without question or appeal, and/or to appeal any judgment, decree, or award. Borrower will sign and deliver all instruments requested by Agent to permit these actions. Agent shall have the right to apply any Award, as per Section 2.2(i)(ii) above relating to insurance proceeds held by Agent. If Borrower receives any Award, Borrower shall promptly deliver the full amount thereof to Agent without deduction of any kind. Notwithstanding anything in this Security Instrument or at law or in equity to the contrary, none of the Award paid to Agent shall be deemed trust funds and Agent may dispose of these proceeds as provided in this Section.

(iii) Application of Award to Restoration. With respect to any portion of the Award that is not for loss of value or property and is less than or equal to \$500,000 and there is no Event of Default, Agent shall make the Award available to Borrower for Restoration. If the Award exceeds \$500,000, Agent shall permit the application of the Award to Restoration in accordance with the provisions of Section 2.2(i)(iv) above relating to insurance proceeds held by Agent if: (A) no more than 10% of the gross square footage of the Land is affected; (B) as a result of the Taking, the Property is not without adequate legal access from a public right-of-way; (C) there is no Default at the time of application; (D) after Restoration, the Property and its use will be in compliance with all Requirements; (E) in Agent's reasonable judgment, Restoration is practical and can be completed within 12 months after the Taking and at least by July 1, 2007; (F) a Debt Coverage Ratio - Actual will continue to be maintained as required by the terms of the Loan Agreement; and (G) Borrower shall have entered into a general construction contract reasonably acceptable in all respects to Agent for Restoration, which contract must include provision for retainage of not less than 10% of the contract sum until final completion of the Restoration. Any portion of the Award not utilized for Restoration as provided above, will be applied to the secured indebtedness. Notwithstanding any provision of this Security Instrument to the contrary, Agent shall not be obligated to make any portion of the Award available for Restoration unless, at the time of the disbursement request, Agent has determined in its reasonable discretion that (y) Restoration can be completed at a cost which does not exceed the aggregate of the remaining Award and any funds deposited or to be deposited with Agent by Borrower (also, "Additional Funds") and (z) the aggregate of any loss of business interruption insurance proceeds which the carrier has acknowledged to be payable (also, "Rent Loss Proceeds") and any funds deposited or to be deposited with Agent by Borrower are sufficient to cover all costs and operating expenses of the Real Property, including payments due and reserves required under the Loan Documents.

(iv) Effect on Secured Indebtedness. Notwithstanding any Taking, Borrower must continue to pay the secured indebtedness and perform the obligations as provided in the Loan Documents. Any reduction in the secured indebtedness due to application of the Award shall take effect only upon Agent's

actual receipt and application of the Award to the secured indebtedness. If the Real Property shall have been foreclosed, sold pursuant to any power of sale granted hereunder, or transferred by deed-in-lieu of foreclosure prior to Agent's actual receipt of the Award, Agent may apply the Award received to the extent of any deficiency upon such sale against any accrued fees and all costs incurred by Agent in connection with such sale.

(k) Protection and Defense of Lien. If the validity or priority of this Security Instrument or of any rights, titles, liens or security interests created or evidenced hereby with respect to the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly or if any legal proceedings are instituted against Borrower with respect thereto, Borrower will give prompt written notice thereof to Agent and at Borrower's own cost and expense will diligently endeavor to cure any defect that may be developed or claimed, and will take all necessary and proper steps for the defense of such legal proceedings, including but not limited to the employment of counsel, the prosecution or defense of litigation and the release or discharge of all adverse claims, and the Agent and the Trustee (whether or not named as a party to legal proceedings with respect thereto) are hereby authorized and empowered to take such additional steps as in their judgment and discretion may be necessary or proper for the defense of any such legal proceedings or the protection of the validity or priority of this Security Instrument and the rights, titles, liens and security interests created or evidenced hereby, including but not limited to the employment of counsel, the prosecution or defense of litigation, the compromise or discharge of any adverse claims made with respect to the Property, the purchase of any tax title and the removal of prior liens or security interests (including but not limited to the payment of debts as they mature or the payment in full of matured or nonmatured debts, which are secured by these prior liens or security interests), and all expenses so incurred of every kind and character shall be a demand obligation owing by Borrower and secured by this Security Instrument and the party incurring such expenses shall be subrogated to all rights of the person receiving such payment.

(l) No Other Liens. Borrower will not, without the prior written consent of Agent, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for the lien for ad valorem taxes on the Property which are not delinquent or mechanic's or materialmen's liens which are being contested in accordance with the provisions of this Security Instrument and Permitted Encumbrances), security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Security Instrument, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Agent, Borrower will cause the same to be promptly discharged and released. Borrower will own all parts of the Property and, except as otherwise set forth in the Loan Documents, will not acquire any fixtures, equipment or other property forming a part of the Property pursuant to a lease, license or similar agreement, without the prior written consent of Agent.

Notwithstanding the foregoing, Borrower may in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted mechanic's or materialmen's lien and pending such contest Borrower shall not be deemed in default hereunder if Borrower provides Lenders with security reasonably satisfactory to Agent and if Borrower promptly causes to be paid any amount adjudged by a court of competent jurisdiction to be due, with all costs and interest thereon, promptly after such judgment.

(m) Tax and Insurance Escrow Account. As additional security for the Loan and in order to secure the performance and discharge of Borrower's obligations under Section 2.2(g) (Ad Valorem Taxes) hereof and Section 6.8 (Insurance) of the Loan Agreement, but not in lieu of such obligations, Borrower shall establish and maintain at all times while this Security Instrument continues in effect an impound account (the "**Tax and Insurance Escrow Account**") with Agent for payment of real estate taxes and assessments and insurance on the Property. Contemporaneously with the execution of this Security Instrument, Borrower will deposit with Agent a sum equal to ad valorem taxes, assessments and charges (which charges for the purpose of this Section shall include without limitation ground rents and water and sewer rents and any other recurring charge which could create or result in a lien against the Property) against the Property for the then current year and the premiums for policies of insurance covering the period for the then current year, all as estimated by Agent. Thereafter, commencing with the first Payment Date following the date hereof and continuing thereafter on each and every Payment Date until the secured indebtedness is fully paid and performed, Borrower will deposit with Agent sufficient funds (as estimated from time to time by Agent) to permit Agent to pay, at least 30 days prior to the due date thereof, the next maturing ad valorem taxes, assessments and charges and premiums for such policies of insurance. Borrower shall be responsible for ensuring the receipt by Agent, at least 30 days prior to the date for payment thereof, of all bills, invoices and statements for all taxes, assessments and insurance premiums to be paid from the Tax and Insurance Escrow Account, and so long as no Default has occurred and is continuing, Agent shall pay (or shall permit Borrower to make withdrawals from the Tax and Insurance Escrow Account to pay) the governmental authority or other party entitled thereto directly to the extent funds are available for such purpose in the Tax and Insurance Escrow Account and except to the extent that Borrower is contesting any such taxes or assessments pursuant to the provisions in the Loan Documents. Agent shall have the right to rely upon tax information furnished by applicable taxing authorities in the payment of such taxes or assessments and shall have no obligation to make any protest of any such taxes or assessments. Any excess over the amounts required for such purposes shall be held by Agent for future use, applied to any secured indebtedness or refunded to Borrower, at Agent's option, and any deficiency in such funds so deposited shall be made up by Borrower upon demand of Agent. The Tax and Insurance Escrow Account shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds. All such funds so deposited shall bear no interest whatsoever, may be mingled with the general funds of Agent and shall be applied by Agent toward the payment of such taxes, assessments, charges and premiums when statements therefor are presented to Agent by Borrower; provided, however, that, if an Event of Default shall have occurred and be continuing hereunder, such funds may at Agent's option be applied

to the payment of the secured indebtedness in the order determined by Agent in its sole discretion (such application to be deemed a voluntary prepayment subject to the terms of the Loan Agreement), and that Agent may at any time, in its discretion, apply all or any part of such funds toward the payment of any such taxes, assessments, charges or premiums which are past due, together with any penalties or late charges with respect thereto. The conveyance or transfer of Borrower's interest in the Property for any reason (including without limitation the foreclosure of a subordinate lien or security interest or a transfer by operation of law) shall constitute an assignment or transfer of Borrower's interest in and rights to such funds held by Agent under this Section but subject to the rights of Agent hereunder. Notwithstanding the foregoing, Agent waives the requirement for an escrow relating to payment of insurance premiums, provided however, at any time following an Event of Default or in the event insurance premiums which are due and payable are not paid or the insurance provider has not received payment of such premiums prior to the due date thereof, Agent may revoke such waiver in writing and require an insurance premium escrow in which case Borrower will deposit with Agent a sum equal to the premiums for policies of insurance covering the period for the then current year, all as estimated by Agent.

(n) Further Assurances. Borrower will, on request of Agent, (i) promptly correct any defect, error or omission which may be discovered in the contents of this Security Instrument or in any other instrument now or hereafter executed in connection herewith or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver and record or file such further instruments (including without limitation further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents or leases) and do such further acts as may be reasonably necessary, desirable or proper to carry out more effectively the purposes of this Security Instrument and such other instruments and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property; (iii) execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically any financing statement) deemed advisable by Agent to protect the lien or the security interest hereunder against the rights or interests of third persons; and (iv) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be reasonably necessary, desirable or proper in the reasonable determination of Agent to enable Bank Parties to comply with the requirements or requests of any agency having jurisdiction over Bank Parties or any examiners of such agencies with respect to the indebtedness secured hereby, Borrower or the Property; and Borrower will pay all costs connected with any of the foregoing.

(o) Tax on Lien. In the event of the enactment after this date of any law of the state where the Real Property is located or of any other governmental entity deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Bank Parties the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security



agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Security Instrument or the indebtedness secured hereby or Bank Parties, then, and in any such event, Borrower, upon demand by Agent, shall pay such taxes, assessments, charges or liens, or reimburse Bank Parties therefor; provided, however, that if in the opinion of counsel for Agent (i) it might be unlawful to require Borrower to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Agent on behalf of the Lenders may elect, by notice in writing given to Borrower, to declare all of the indebtedness secured hereby to be and become due and payable ninety (90) days from the giving of such notice.

(p) Location and Use of Collateral. All tangible Collateral will be used in the business of Borrower and shall remain in Borrower's possession or control at all times at Borrower's risk of loss and shall be located on the Real Property.

(q) Proceeds of Collateral. Borrower shall account fully and faithfully for and, if Agent so elects, shall promptly pay or turn over to Agent for the benefit of Lenders the proceeds in whatever form received from disposition in any manner of any of the Collateral or shall use such proceeds to replace the Collateral to the extent required hereby, except as otherwise specifically authorized herein. Borrower shall at all times keep the Collateral and its proceeds separate and distinct from other property of Borrower and shall keep accurate and complete records of the Collateral and its proceeds.

(r) Permitted Encumbrances. Borrower will comply with and will perform all of the covenants, agreements and obligations imposed upon it or the Property in the Permitted Encumbrances in accordance with their respective terms and provisions. Borrower will not modify or permit any modification of any Permitted Encumbrance if such modification adversely affects the Property or otherwise would not have been a Permitted Encumbrance, without the prior written consent of Agent.

(s) Special Insurance Provision. Unless Borrower provides evidence of the insurance coverage required by the Loan Agreement, Agent may purchase insurance at Borrower's expense to protect Agent's and Lenders' interests in the Property. This insurance may, but need not, protect Borrower's interests. The coverage that Agent purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Agent, but only after providing evidence that Borrower has obtained insurance as required by the Loan Agreement. If Agent purchases insurance for the Property, Borrower will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges Agent may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to Borrower's total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

2.3 Right of Agent to Perform. Borrower agrees that, if Borrower fails to perform any act or to take any action which hereunder Borrower is required to perform or take, or to pay any money which hereunder Borrower is required to pay, or takes any action prohibited hereby and same constitutes an Event of Default hereunder, Agent, in Borrower's name or in its own name, may but shall not be obligated to perform or cause to be performed such act or take such action or pay such money or remedy any action so taken, without releasing Borrower from any obligation, and any expenses so incurred by Agent, and any money paid by Agent in connection therewith, shall be a demand obligation owing by Borrower to Agent and secured by this Security Instrument and Agent, upon making such payment, shall be subrogated to all of the rights of the person, corporation or body politic receiving such payment. Any amounts due and owing by Borrower to Agent pursuant to this Security Instrument shall bear interest from the date such amount becomes due until paid at the Default Rate and shall be a part of the secured indebtedness and shall be secured by this Security Instrument and by any other instrument securing the secured indebtedness. No action on the part of Agent or payment of any money by Agent shall be deemed to cure any Event of Default.

### ARTICLE III.

#### Assignment of Rents

3.1 Assignment. In order to provide a source of future payment of the indebtedness secured hereby, Borrower does hereby absolutely and unconditionally assign, transfer and set over to Agent and the Lenders all of the rents, income, receipts, revenues, issues, profits and other sums of money (collectively, the "Rent") that are now and/or at any time hereafter become due and payable to Borrower under the terms of any leases, resident agreements, service agreements, license agreements or other occupancy or use agreements (the "Leases") now or hereafter covering the Property, or any part thereof, or arising or issuing from or out of the Leases or from or out of the Property or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, deficiency rents and liquidated damages following default, security deposits (whether cash, one or more letters of credit, bonds or other form of security), advance rents, all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by destruction or damage to the Property, and all of Borrower's rights to recover monetary amounts from any lessee in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of lease defaults, including rejections, under any applicable Bankruptcy Law (as hereinafter defined), including specifically the immediate and continuing right to collect and receive each and all of the foregoing and any and all guaranties of payment of the Rent. Until receipt from Agent of notice of the occurrence of an Event of Default (a "Notice of Default"), each lessee under the Leases may pay Rent directly to Borrower and Borrower shall have the right to receive such Rent provided that Borrower shall hold such Rent as a trust fund to be applied as required by Agent. Upon receipt from Agent of a Notice of Default, each lessee under the Leases is hereby authorized and directed to pay directly to Agent for the benefit of the Lenders all Rent thereafter accruing and the receipt of Rent by Agent shall be a release of such lessee to the extent of all amounts so paid. The receipt by a lessee under the Leases of a Notice of Default shall be sufficient authorization for such lessee to make all future payments of Rent directly to Agent and

each such lessee shall be entitled to rely on such Notice of Default and shall have no liability to Borrower for any Rent paid to Agent after receipt of such Notice of Default. Rent so received by Agent for any period prior to foreclosure under this Security Instrument or acceptance of a deed in lieu of such foreclosure shall be applied by Agent to the payment (in such order as Agent shall determine) of (a) all expenses of managing the Property, including but not limited to the salaries, fees and wages of a managing agent and such other contractors or agents as Agent may deem necessary or desirable; all expenses of operating and maintaining the Property, including but not limited to all taxes, assessments, charges, claims, utility costs and premiums for insurance, and the cost of all alterations, renovations, repairs or replacements; and all expenses incident to taking and retaining possession of the Property and/or collecting the Rent due and payable under the Leases; and (b) the secured indebtedness in such order as Agent in its sole discretion may determine. In no event will the assignment pursuant to this Section reduce the secured indebtedness except to the extent, if any, that Rent is actually received by Agent and applied upon or after said receipt to such indebtedness in accordance with the preceding sentence. Without impairing its rights hereunder, Agent may, at its option, at any time and from time to time, release to Borrower Rent so received by Agent or any part thereof. As between Borrower, Lenders and Agent, and any person claiming through or under Borrower, other than any lessee under the Leases who has not received a Notice of Default pursuant to this Section, the assignment contained in this Section is intended to be absolute, unconditional and presently effective and the provisions of this Section for notification of lessees under the Leases upon the occurrence and during the continuance of an Event of Default are intended solely for the benefit of each such lessee and shall never inure to the benefit of Borrower or any person claiming through or under Borrower, other than a lessee who has not received such notice. It shall never be necessary for Agent or Lenders to institute legal proceedings of any kind whatsoever to enforce the provisions of this Section. At any time after the occurrence of an Event of Default during which Borrower is receiving Rent directly from lessees under the Leases, Borrower shall, upon receipt of written direction from Agent, make demand and/or sue for all Rent due and payable under one or more Leases, as directed by Agent, as it becomes due and payable, including Rent which is past due and unpaid. In the event Borrower fails to take such action, or at any time during which Borrower is not receiving Rent directly from lessees under the Leases, Agent shall have the right (but shall be under no duty) to demand, collect and sue for, in its own name or in the name of Borrower, all Rent due and payable under the Leases, as it becomes due and payable, including Rent which is past due and unpaid. Agent shall not be deemed to have taken possession of the Property except on the exercise of its option to do so, evidenced by its demand and overt act for such purpose. Borrower shall make no assignment of the Rent, nor shall Borrower cancel or amend any Lease or any other instrument under which Rent is to be paid or waive, excuse, condone, discount, set off, compromise or in any manner release any obligation thereunder except in the ordinary course of Borrower's business, nor shall Borrower receive or collect any Rent for a period of more than one month in advance of the date on which payment thereof is due (provided that security deposits, entrance fees or other deposits to secure the obligations of residents or tenants are hereby permitted) and Borrower shall duly and punctually observe and perform every obligation to be performed by it under each Lease, and shall not do or permit to be done anything to impair the security thereof and shall enforce, to the extent such enforcement would be reasonably prudent under the circumstances, every obligation of each other party thereto. The assignment contained in this Section 3.1 shall terminate upon the release of this Security Instrument but no lessee under the Leases shall be required to take

notice of such termination until a copy of a release of this Security Instrument shall have been delivered to such lessee.

3.2 Controlling Provision. Contemporaneously with the execution of this Security Instrument, Borrower is executing an Assignment of Leases and Rents in favor of Agent and the Lenders. To the extent any provision of Section 3.1 above is construed to contradict, conflict with or be inconsistent with any term, condition or provision contained in the Assignment of Leases and Rents, the applicable terms, conditions and provisions of the Assignment of Leases and Rents shall supersede such contradicting, conflicting or inconsistent provisions of Section 3.1 and shall control.

3.3 Lessee. The term "lessee" as used in this Article III means a lessee, resident, patient, licensee, or party to a service agreement or any other occupancy or use agreement with respect to any portion of the Property.

#### ARTICLE IV.

##### Remedies in Event of Default

4.1 Defaults. The terms "Default" and "Event of Default" as used in this Security Instrument shall mean the occurrence of a Default or an Event of Default as respectively defined in the Loan Agreement. Borrower acknowledges that a "Default" or an "Event of Default" by an Other Borrower (or any other obligated party except Bank Parties) under the Loan Documents will constitute a Default or Event of Default, respectively, hereunder, and vice versa.

4.2 Acceleration. Upon the occurrence of an Event of Default, Agent shall have the option of declaring all or any part of the secured indebtedness in its entirety to be immediately due and payable without presentment, demand, protest or notice of any kind, and the liens and security interests evidenced hereby shall be subject to foreclosure in any manner provided for herein or provided for by law as Agent may elect.

4.3 Possession. Upon the occurrence and during the continuance of an Event of Default, Agent on behalf of Lenders is authorized prior or subsequent to the institution of any foreclosure proceedings to enter upon the Property, or any part thereof, and to take possession of the Property and of all books, records and accounts relating thereto and to exercise without interference from Borrower any and all rights which Borrower has with respect to the management, possession, operation, protection or preservation of the Property, including the right to rent the same for the account of Borrower and to deduct from such Rents all costs, expenses and liabilities of every character incurred by Agent or Lenders in collecting such Rents and in managing, operating, maintaining, protecting or preserving the Property and to apply the remainder of such Rents on the indebtedness secured hereby in such manner as Agent may elect. All such costs, expenses and liabilities incurred by Agent or Lenders in collecting such Rents and in managing, operating, maintaining, protecting or preserving the Property, if not paid out of Rents as hereinabove provided, shall constitute a demand obligation owing by Borrower and secured by this Security Instrument and shall bear interest from the date of expenditure until paid at the Default Rate, all of which shall constitute a portion of the secured indebtedness. If

necessary to obtain the possession provided for above, Agent, on behalf of Lenders, may invoke any and all legal remedies to dispossess Borrower, including specifically one or more actions for forcible entry and detainer, trespass to try title and restitution. **IN CONNECTION WITH ANY ACTION TAKEN BY AGENT PURSUANT TO THIS SECTION, AGENT AND LENDERS SHALL NOT BE LIABLE FOR ANY LOSS SUSTAINED BY BORROWER RESULTING FROM ANY FAILURE TO LET THE PROPERTY, OR ANY PART THEREOF, OR FROM ANY OTHER ACT OR OMISSION OF AGENT IN MANAGING THE PROPERTY (REGARDLESS OF WHETHER SUCH LOSS IS CAUSED BY THE NEGLIGENCE OF AGENT) UNLESS SUCH LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AGENT, NOR SHALL AGENT BE OBLIGATED TO PERFORM OR DISCHARGE ANY OBLIGATION, DUTY OR LIABILITY UNDER ANY LEASE COVERING THE PROPERTY OR ANY PART THEREOF OR UNDER OR BY REASON OF THIS SECURITY INSTRUMENT OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER. BORROWER SHALL AND DOES HEREBY AGREE TO INDEMNIFY AGENT AND LENDERS FOR, AND TO DEFEND AND HOLD AGENT AND LENDERS HARMLESS FROM, ANY AND ALL LIABILITY, LOSS OR DAMAGE WHICH MAY OR MIGHT BE INCURRED BY AGENT OR LENDERS UNDER ANY SUCH LEASE OR UNDER OR BY REASON OF THIS SECURITY INSTRUMENT OR ANY OTHER LOAN DOCUMENT OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST AGENT BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS OR AGREEMENTS CONTAINED IN ANY SUCH LEASE, REGARDLESS OF WHETHER SUCH LIABILITY, LOSS, DAMAGE, CLAIMS OR DEMANDS ARE THE RESULT OF THE NEGLIGENCE OR CLAIMS OF NEGLIGENCE OF AGENT AND/OR LENDERS OR ANY STRICT LIABILITY BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AGENT AND/OR LENDERS.** Should Agent or Lenders incur any such liability, the amount thereof, including costs, expenses and reasonable attorney's fees, shall be secured hereby and Borrower shall reimburse Agent therefor immediately upon demand. Nothing in this Section shall impose any duty, obligation or responsibility upon Agent or Lenders for the control, care, operation, management or repair of the Property, nor for the carrying out of any of the terms and conditions of any such lease; nor shall it operate to make Agent or Lenders responsible or liable for any waste committed on the Property by the tenants or by any other parties or for any dangerous or defective condition of the Property, **OR FOR ANY NEGLIGENCE IN THE OPERATION, MANAGEMENT, UPKEEP, REPAIR OR CONTROL OF THE PROPERTY RESULTING IN LOSS OR INJURY OR DEATH TO ANY TENANT, LICENSEE, EMPLOYEE OR STRANGER OR ANY STRICT LIABILITY.** Borrower hereby assents to, ratifies and confirms any and all actions of Agent or Lenders with respect to the Property taken under this Section. For purposes of this Section, the term "Agent" or "Lenders" shall include the directors, officers, employees, attorneys and agents of Agent or Lenders and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with Agent or Lenders.

4.4 Foreclosure. Upon the occurrence of any Event of Default, in addition to any other rights or remedies granted or available to Agent and Lenders hereunder or under the other

Loan Documents, at law, in equity or otherwise, Agent on behalf of Lenders may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of an Event of Default and demand for sale and this Security Instrument shall remain in force; and said Trustee or its successor or successors as hereinafter provided for, at the request of the legal holder of the aforesaid Note, may proceed to sell the Property hereinbefore conveyed, or any part thereof, at public venue or outcry at the place then customarily employed for that purpose in the county where the Property are located to the highest bidder for cash, first giving the public notice as required by law of the time, terms and place of sale and description of the property to be sold, by advertisement published as is provided by the laws of the State of Missouri then in effect, and on such sale Trustee shall receive the proceeds thereof and shall execute a deed or deeds, in fee simple to the property sold, to the purchaser or purchasers thereof, and any deed made by Trustee in pursuance of the power herein granted and all recitals therein contained shall be conclusive proof of the facts therein set forth. At such sale, Agent shall be entitled to bid for or purchase the mortgaged Property, the same as any third person might do. Trustee shall pay out the proceeds of such sale, first, the cost and expense of executing this trust, including attorneys fees of the Trustee and lawful compensation to the Trustee for its services as provided by statute, next, it shall repay any money advanced for taxes, insurance or other advances or charges with interest thereon, as above provided, next, the amount unpaid on said Note together with the interest accrued thereon and all overdue payments and charges provided for herein and all other sums or amounts due under the terms of any of the Loan Documents, and, the remainder, if any, shall be paid to such parties as may legally be entitled thereto. Notwithstanding anything to the contrary in this paragraph or any other provision hereof, all rights of the Agent or any other legal holder of the Note, including Lenders, including without limitation, to commence a lawsuit for payment of the Note, to foreclose this Security Instrument by judicial action or to take any other legal action to enforce this Security Instrument by judicial action or to take any other legal action to enforce payment of said secured indebtedness, by court proceedings for legal or equitable relief, or otherwise, shall remain intact and may be pursued by Agent or such other legal holder including Lenders, at its option and in its sole discretion.

4.5 Receiver. In addition to all other remedies herein provided for, Borrower agrees that upon the occurrence and during the continuance of an Event of Default hereunder, Agent on behalf of Lenders shall as a matter of right be entitled to the appointment of a receiver or receivers for all or any part of the Property, whether such receivership be incident to a proposed sale of such property or otherwise, and without regard to the value of the Property or the solvency of any person or persons liable for the payment of the indebtedness secured hereby, and Borrower does hereby consent to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by Agent, but nothing herein is to be construed to deprive Agent of any other right, remedy or privilege it may now have under the law to have a receiver appointed; provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Agent to receive payment of the Rents and income pursuant to Section 3.1 hereof. Any money advanced by Agent or Lenders in connection with any such receivership shall be a demand obligation owing by Borrower to Agent and shall bear interest from the date of making such advancement by Agent or Lenders until paid at the

Default Rate and shall be a part of the secured indebtedness and shall be secured by this Security Instrument and by any other instrument securing the secured indebtedness.

4.6 Agent as Purchaser. Agent on behalf of Lenders shall have the right to become the purchaser at any sale held by any Trustee or substitute or successor or by any receiver or public officer, and Agent on behalf of Lenders shall have the right to credit upon the amount of the bid made therefor, to the extent necessary to satisfy such bid, the secured indebtedness owing to Bank Parties.

4.7 Uniform Commercial Code. Upon the occurrence and during the continuance of an Event of Default, Agent on behalf of Lenders may exercise its rights of enforcement with respect to the Collateral under the Uniform Commercial Code of the state where the Real Property is located, as amended (the "UCC"), and in conjunction with, in addition to or in substitution for those rights and remedies:

(a) Agent on behalf of Lenders may enter upon the Property to take possession of, assemble and collect the Collateral or to render it unusable; and

(b) Agent on behalf of Lenders may require Borrower to assemble the Collateral and make it available at a place Agent designates which is mutually convenient to allow Agent on behalf of Lenders to take possession or dispose of the Collateral; and

(c) written notice mailed to Borrower as provided herein 10 days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; and

(d) any sale made pursuant to the provisions of this Section shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the Real Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Collateral hereunder as is required for such sale of the Real Property under power of sale; and

(e) in the event of a foreclosure sale, whether made by the Trustee under the terms hereof, or under the judgment of a court, the Collateral and the Real Property may, at the option of Agent, be sold as a whole; and

(f) it shall not be necessary that Agent take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; and

(g) prior to application of proceeds of disposition of the Collateral to the secured indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorney's fees and legal expenses incurred by Agent or Lenders; and

(h) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the indebtedness or as to the occurrence of any Event of Default, or as to Agent having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Agent, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(i) Agent may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Agent, including the sending of notices and the conduct of the sale, but in the name and on behalf of Agent.

4.8 Remedies Cumulative. All remedies herein expressly provided for are cumulative of any and all other remedies existing at law or in equity and are cumulative of any and all other remedies provided for in any other instrument securing the payment of the secured indebtedness, or any part thereof, or otherwise benefiting Bank Parties, and the Trustee and Bank Parties shall, in addition to the remedies herein provided, be entitled to avail themselves of all such other remedies as may now or hereafter exist at law or in equity for the collection of the secured indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any remedy provided for hereunder or under any such other instrument or provided for by law shall not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies.

4.9 Resort to Any Security. Agent on behalf of Lenders may resort to any security given by this Security Instrument or to any other security now existing or hereafter given to secure the payment of the secured indebtedness, in whole or in part, and in such portions and in such order as may seem best to Agent in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Security Instrument.

4.10 Waiver. To the full extent Borrower may do so, Borrower agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force pertaining to the rights and remedies of sureties or redemption, and Borrower, for Borrower and Borrower's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the secured indebtedness, notice of election to mature or declare due the whole of the secured indebtedness and all rights to a marshaling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and security interests hereby created. Borrower shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Agent or Lenders under the terms of this Security Instrument to a sale of the Property for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Agent or Lenders under the terms of this Security Instrument to the payment of such indebtedness out of



the proceeds of sale of the Property in preference to every other claimant whatever. If any law referred to in this Section and now in force, of which Borrower or Borrower's heirs, devisees, representatives, successors and assigns and such other persons claiming any interest in the Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

4.11 Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale Borrower or Borrower's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Property by, through or under Borrower are occupying or using the Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale. Subject to the terms of any applicable non-disturbance and/or attornment agreement between Agent and any tenant(s) of the Property, such tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the portion of the Property occupied, such rental to be due daily to the purchaser. In the event the tenant fails to surrender possession of the portion of the Property upon demand, the purchaser shall be entitled to institute and maintain an action for forcible entry and detainer of said property in any court of competent jurisdiction in which such property, or any part thereof, is situated.

4.12 Tender After Acceleration. If, following the occurrence of an Event of Default and the acceleration of the secured indebtedness but prior to the foreclosure of this Security Instrument against the Property, Borrower shall tender to Agent payment of an amount sufficient to pay the entire secured indebtedness, such tender shall be deemed to be a voluntary prepayment under the Note and, consequently, Borrower shall also pay to Agent any charge or premium required under the Loan Agreement to be paid in order to prepay principal; provided, however, that in no event shall any amount payable under this Section, when added to the interest otherwise payable on the Note and the other secured indebtedness, exceed the maximum interest permitted under applicable law.

4.13 Collection Expenses. Upon the occurrence of an Event of Default, Borrower shall reimburse Bank Parties for all expenses incurred by Bank Parties as a result of such Event of Default, including, but not limited to, all travel costs, third-party appraisal fees, environmental report preparation and testing fees, architectural and engineering expenses, and legal fees and expenses.

## ARTICLE V.

### Miscellaneous

5.1 Release. If all of the secured indebtedness be paid as the same becomes due and payable and if all of the covenants, warranties, undertakings and agreements made in this Security Instrument are kept and performed, then and in that event only, all rights under this Security Instrument shall terminate and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by Agent and Lenders in due form at Borrower's cost. Section 2.11 of the Loan Agreement provides for partial releases of certain Facilities (including the Property), subject to the terms thereof.

5.2 Trustee.

(a) Trustee accepts this trust when this Security Instrument executed and acknowledged is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Borrower, Agent, Lenders or Trustee shall be a party unless brought by Trustee. Trustee hereby lets the Property to Borrower and assigns until this Security Instrument is released and satisfied or until an Event of Default occurs, on the following terms: Borrower and all persons claiming or possessing the Property or any part thereof shall pay rent therefore during the term at one cent (1¢) per month payable upon demand, and shall and will surrender peaceful possession of the Property, and every part thereof, to Trustee immediately on such Event of Default and without notice or demand therefore, and thereupon Trustee shall be entitled to the Rents, revenues, incomes and profits therefrom as hereinabove provided; provided nothing in this Security Instrument shall be construed to prevent Agent on behalf of Lenders from having and taking every legal means to enforce payment of the Note, and each installment thereof, without having first enforced this Security Instrument.

(b) Agent, from time to time, may substitute another Trustee in place of the Trustee named herein, to execute the trusts hereby created; and upon such appointment, and without conveyance to the successor trustee, the successor trustee shall be vested with all the title, interest, powers, duties and trusts in the Property hereby vested in or conferred upon Trustee herein named. Each such appointment and substitution shall be made by written instrument executed by the Agent containing reference to this Security Instrument sufficient to identify it, which instrument, when recorded in the office of the County Recorder of the county or counties (or, in the case of the City of St. Louis, the Recorder of Deeds for such city) in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee. The recital or statement, in any instrument executed by Trustee in pursuance of any of said trusts, of the due authorization of any agent of the Trustee executing the same shall for all purposes be conclusive proof of such authorization. In the event any foreclosure advertisement is running or has run at the time of an appointment of a substitute Trustee, the substitute Trustee may to the extent permitted by applicable law, consummate the advertised sale without the necessity of republishing such advertisement. The Trustee may resign at any time on giving written notice to Borrower and Agent.

(c) No Trustee shall be disqualified from acting as Trustee hereunder, or from performing any of the duties as Trustee or from exercising the rights, powers, and remedies herein granted by reason of the fact such Trustee is an officer, employer or stockholder of the Agent or a Lender, or is interested, directly or indirectly, as the holder of the Note hereby secured, Borrower hereby expressly consenting to Trustee acting as such Trustee irrespective of the fact that Trustee might otherwise be disqualified for any of the foregoing reasons, and that any interest which such Trustee or any successor shall have or may acquire in the debt hereby secured, or the Property hereby conveyed, shall neither interfere with nor prevent their acting as Trustee or from purchasing the Property at the sale, and all parties waive any objection to Trustee or from purchasing the Property at the sale, and all parties waive any objection to Trustee having acquiring any such interest in the debt or property aforesaid and continuing to act as such Trustee.

**5.3 Liability and Indemnification of Trustee. THE TRUSTEE SHALL NOT BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT DONE BY THE TRUSTEE IN GOOD FAITH, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCES WHATSOEVER (INCLUDING THE TRUSTEE'S NEGLIGENCE), EXCEPT FOR THE TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.** The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. All moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and the Trustee shall be under no liability for interest on any moneys received by him hereunder. **BORROWER WILL REIMBURSE THE TRUSTEE FOR, AND INDEMNIFY AND SAVE HIM HARMLESS AGAINST, ANY AND ALL LIABILITY AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) WHICH MAY BE INCURRED BY HIM IN THE PERFORMANCE OF ITS DUTIES HEREUNDER (INCLUDING ANY LIABILITY AND EXPENSES RESULTING FROM THE TRUSTEE'S OWN NEGLIGENCE).** The foregoing indemnity shall not terminate upon release, foreclosure or other termination of this Security Instrument.

**5.4 Waiver by Bank Parties.** Bank Parties may at any time and from time to time (a) waive or not enforce compliance by Borrower with any covenant herein or in the Loan Documents made by Borrower, (b) consent to Borrower doing any act which Borrower is prohibited from doing under the Loan Documents, or consent to Borrower failing to do any act which Borrower is required to do under the Loan Documents, (c) release any part of the Property, or any interest therein, from the lien and security interest of this Security Instrument without impairing or releasing the lien of this Security Instrument on the remainder of the Property or affecting the liability of Borrower or any guarantor, or (d) release any party liable, either directly or indirectly, for the secured indebtedness or for any covenant herein or in the Loan Documents, without impairing or releasing the liability of any other party. No such act shall in any way impair the rights of Agent or Lenders hereunder except to the extent specifically agreed to by Agent in writing.

5.5 Actions by Bank Parties. The lien, security interest and other security rights of Bank Parties hereunder and in any other Loan Document shall not be impaired by any indulgence, moratorium or release granted by Bank Parties, including but not limited to (a) any renewal, extension, increase or modification which Bank Parties may grant with respect to any secured indebtedness, (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Bank Parties may grant in respect of the Property, or any part thereof or any interest therein, or (c) any release or indulgence granted to any endorser, guarantor or surety of any secured indebtedness. The taking of additional security by Bank Parties shall not release or impair the lien, security interest or other security rights of Agent or Lenders hereunder or affect the liability of Borrower or of any endorser or guarantor or other surety or improve the right of any permitted junior lienholder in the Property.

5.6 Rights of Bank Parties. Agent may waive any Event of Default without waiving any other prior or subsequent Event of Default. Agent may remedy any Event of Default without waiving the Event of Default remedied. Neither the failure by Agent or Lenders to exercise, nor the delay by Agent or Lenders in exercising, any right, power or remedy upon any Event of Default shall be construed as a waiver of such Event of Default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Agent of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by Agent and then such waiver or consent shall be effective only in the specific instances, for the purpose for which given and to the extent therein specified. No notice to or demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances. Acceptance by Agent of any payment in an amount less than the amount then due on any secured indebtedness shall be deemed an acceptance on account only and shall not in any way affect the existence of an Event of Default hereunder.

5.7 Notification of Account Debtors. Agent may at any time after the occurrence and during the continuance of an Event of Default by Borrower notify the account debtors or obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Agent directly.

5.8 Fixture Filing. This Security Instrument shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records in the Office of the County Recorder where the Property (including said fixtures) is situated. This Security Instrument shall also be effective as a financing statement covering as-extracted collateral and is to be filed for record in the real estate records of the county where the Property is situated. The mailing address of Borrower (as debtor) and the address of Agent and Lenders (as secured parties) from which information concerning the security interest may be obtained are the addresses of Borrower and Agent and Lenders set forth on the first page of this Security Instrument.

5.9 Filing and Recordation; Authorization to File. Borrower will cause this Security Instrument and all amendments and supplements hereto and substitutions for this Security Instrument and all financing statements and continuation statements relating hereto to be recorded, filed, re-recorded and refiled in such manner and in such places as Agent shall reasonably request, and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges. Borrower hereby irrevocably authorizes Agent on behalf of Lenders at any time and from time to time to file, without the signature of Borrower, in any jurisdiction any amendments to existing financing statements and any initial financing statements and amendments thereto that (a) indicate the Property (i) as "all assets of Borrower and all proceeds thereof, and all rights and privileges with respect thereto" or words of similar effect, regardless of whether any particular asset comprised in the Property falls within the scope of Article 9 of the UCC, or (ii) as being of an equal or lesser scope or with greater detail; (b) contain any other information required by subchapter E of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including whether Borrower is an organization, the type of organization and any organization identification number issued to Borrower; and (c) are necessary to properly effectuate the transactions described in the Loan Documents, as determined by Agent in its discretion. Borrower agrees to furnish any such information to Agent promptly upon its reasonable request. Borrower further agrees that a carbon, photographic or other reproduction of this Agreement or any financing statement describing any Property is sufficient as a financing statement and may be filed in any jurisdiction by Agent.

5.10 Dealing with Successor. In the event the ownership of the Property or any part thereof becomes vested in a person other than Borrower, Agent may, without notice to Borrower, deal with such successor or successors in interest with reference to this Security Instrument and to the indebtedness secured hereby in the same manner as with Borrower, without in any way vitiating or discharging Borrower's liability hereunder or for the payment of the indebtedness secured hereby. No sale of the Property, no forbearance on the part of Bank Parties and no extension of the time for the payment of the indebtedness secured hereby given by Bank Parties shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Borrower hereunder or for the payment of the indebtedness secured hereby or the liability of any other person hereunder or for the payment of the indebtedness secured hereby, except as agreed to in writing by Agent.

5.11 Place of Payment. The Note and all other secured indebtedness which may be owing hereunder at any time by Borrower shall be payable at the place designated in the Note, or if no such designation is made, at the office of Agent at the address indicated in this Security Instrument, or at such other place in Dallas County, Texas as Agent may designate in writing.

5.12 Subrogation. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Bank Parties at Borrower's request and Bank Parties shall be subrogated to any and all rights, security interests and liens owned or held by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released; provided, however, that the terms and provisions of this Security Instrument shall

govern the rights and remedies of Bank Parties and shall supersede the terms, provisions, rights and remedies under and pursuant to the instruments creating the lien or liens to which Bank Parties are subrogated hereunder.

5.13 Application of Indebtedness. If any part of the secured indebtedness cannot be lawfully secured by this Security Instrument or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness or if the lien and security interest of the secured indebtedness of this Security Instrument are invalid or unenforceable as to any part of the secured indebtedness or as to any part of the Property, then all payments made on the secured indebtedness, whether voluntary or under foreclosure or other enforcement action or procedure, shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured in whole or in part by this Security Instrument.

5.14 Notice. Any notice, request, demand or other communication required or permitted hereunder, or under the Note, or under any other instrument securing the payment of the Note (unless otherwise expressly provided therein) shall be given in the manner set forth in the Loan Agreement.

5.15 Heirs, Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Borrower, and the heirs, devisees, representatives, successors and assigns of Borrower including all successors in interest of Borrower in and to all or any part of the Property, and shall inure to the benefit of Bank Parties and their respective heirs, successors, substitutes and assigns and shall constitute covenants running with the land. All references in this Security Instrument to the Trustee, Borrower or Bank Parties shall be deemed to include all such heirs, devisees, representatives, successors, substitutes and assigns.

5.16 Severability. A determination that any provision of this Security Instrument is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Security Instrument to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

5.17 Gender and Number. Within this Security Instrument, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, and words in the plural number shall be held and construed to include the singular, unless in each instance the context otherwise requires.

5.18 Counterparts. This Security Instrument may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

5.19 Joint and Several. Where two or more persons or entities have executed this Security Instrument, unless the context clearly indicates otherwise, the term "Borrower" as used in this Security Instrument means the grantors hereunder or either or any of them and the obligations of Borrower hereunder shall be joint and several.

5.20 Headings. The Section headings contained in this Security Instrument are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several Sections hereof.

5.21 Modification or Termination. The Loan Documents may only be modified or terminated by a written instrument or instruments executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

5.22 Negation of Partnership. Nothing contained in the Loan Documents is intended to create any partnership, joint venture or association between Borrower and Bank Parties, or in any way make any Bank Party a co-principal with Borrower with reference to the Property, and any inferences to the contrary are hereby expressly negated.

5.23 APPLICABLE LAW. THIS SECURITY INSTRUMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (WITHOUT GIVING EFFECT TO TEXAS' PRINCIPLES OF CONFLICTS OF LAW) AND THE LAW OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN SUCH STATE, EXCEPT FOR THOSE PROVISIONS IN THIS SECURITY INSTRUMENT PERTAINING TO THE CREATION, PERFECTION OR VALIDITY OF OR EXECUTION ON LIENS OR SECURITY INTERESTS ON PROPERTY LOCATED IN THE STATE WHERE THE REAL PROPERTY IS LOCATED, WHICH PROVISIONS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE REAL PROPERTY IS LOCATED AND APPLICABLE UNITED STATES FEDERAL LAW.

5.24 Statutory Notice. The following notice is included in compliance with Rev. Stat. MO. Section 432.045: Oral agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable. To protect Borrower, Agent and Lenders from misunderstanding or disappointment, any agreements reached by such parties covering such matters are contained in the Loan Documents, which collectively are the complete and exclusive statement of the agreement between the parties hereto, except as they may later agree in writing to modify the Loan Documents.

5.25 Limitation of Liability. Section 8 (Limitation of Liability) of the Note is incorporated herein.

5.26 Roles and Responsibilities. Section 1.7 (Roles and Responsibilities) of the Loan Agreement is incorporated herein.

REMAINDER OF PAGE INTENTIONALLY BLANK  
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, Borrower to be effective as of the 30<sup>th</sup> day of March, 2005, has caused this Deed of Trust, Security Agreement and Assignment of Rents to be executed under seal.

KG MISSOURI-CC OWNER, LLC, a Delaware limited liability company

By: R. Stanley Young  
R. Stanley Young, Vice President

STATE OF TEXAS       )  
                                  )  
COUNTY OF DALLAS    )

On this 24 day of March, in the year 2005, before me, Kimberly A. Buhrow, a Notary Public in and for said state, personally appeared R. Stanley Young, Vice President of KG MISSOURI-CC OWNER, LLC, a Delaware limited liability company, known to me to be the person who executed the within Deed of Trust on behalf of KG MISSOURI-CC OWNER, LLC, a Delaware limited liability company, and acknowledged to me that he/she executed the same for the purposes therein stated.



Kimberly A. Buhrow  
Notary Public in and for said County and State  
Kimberly A. Buhrow  
Typed or Printed Name of Notary Public

My Commission Expires:

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

PREPARED BY AND WHEN  
RECORDED RETURN TO:  
Thompson & Knight L.L.P.  
1700 Pacific Avenue, Suite 3300  
Dallas, Texas 75201  
Attention: Staci J. Strong



## EXHIBIT A

### Legal Description

A tract of land being in U.S. Survey 1962, Township 45 North, Range 5 East, City of Creve Coeur, St. Louis County, Missouri, and being more particularly described as follows: Beginning at an old stone at the Northwest corner of PARK WEST PLAT FIVE, as recorded in Plat Book 96 Page 30 of the St. Louis County, Missouri records; thence along the Southwest line of said Park West Plat Five and the Southwest line of N/F Robert Terranova J/T et al., as recorded in Deed Book 11909 Page 2460 of the St. Louis County, Missouri records, South 29 degrees 26 minutes 46 seconds East 771.54 feet to the North corner of N/F Caplaco Nine, Inc., a Missouri corporation, as recorded in Deed Book 8244 page 2387 of the St. Louis County, Missouri records; thence along the Northwest line of said Caplaco Nine, Inc., South 60 degrees 12 minutes 00 seconds West 531.48 feet to the Northeast right-of-way line of Craig (60 feet wide) Road; thence along said Northeast right-of-way line the following courses and distances: North 29 degrees 48 minutes 01 second West 81.99 feet along a curve to the left with a radius of 984.93 feet, an arc length of 228.62 feet, and a chord bearing North 36 degrees 26 minutes 45 seconds West; North 43 degrees 05 minutes 45 seconds West 8.24 feet along a curve to the right with a radius of 924.93 feet, an arc length of 448.25 feet, and a chord bearing North 29 degrees 12 minutes 45 seconds West; North 15 degrees 19 minutes 45 seconds West 8.44 feet along a curve to the right with a radius of 686.20 feet, an arc length of 187.44 feet, and a chord bearing North 07 degrees 30 minutes 16 seconds West to the Southwest corner of The Enclave At Moorland Estates, as recorded in Plat Book 339 Pages 48-49 of the St. Louis County, Missouri records; thence along the South line of said The Enclave At Moorland Estates, North 82 degrees 45 minutes 29 seconds East 179.17 feet; thence North 09 degrees 21 minutes 48 seconds East 49.94 feet; thence North 82 degrees 45 minutes 29 seconds East 263.67 feet; thence South 09 degrees 26 minutes 28 seconds West 49.96 feet; thence North 60 degrees 17 minutes 10 seconds East 78.10 feet to the point of beginning.

## DIVIDER II – 8. Community Served

**State of Missouri  
CON Application  
Brookdale Senior Living  
The Hallmark of Creve Coeur**

**Divider-II Proposal Description:**

**8. Define the community to be served.**

Many of the Hallmark of Creve Coeur residents are now starting to age in place and will require a higher level of care to be able to continue to live in their home at The Hallmark. To serve this purpose, the community seeks this Certificate of Need and licensure for Assisted Living. We feel that an assisted living component will fulfill the needs of our internal residents throughout the years.

The addition of Assisted Living for residents that currently live in the building would save many residents (some who moved in when the building opened) from having to move out of their home. As these seniors age in place, it is important to offer them the next level of care in our community. They consider The Hallmark their home and do not want to move to another community. Adding this assisted living capability will offer them the ability to stay in the home they know and allow them to get the services that they need.

Assisted Living services allow seniors to be the best they can physically, with nursing oversight and medication management – it also provides for them nutritional wellbeing. The Hallmark allows its residents to pursue what we call an Optimum Life, which means to be the best they can in six crucial areas of wellness: socially, intellectually, spiritually, purposefully, physically and emotionally; it also gives them purpose through great programming opportunities. One such programming example is our Ladies of The Hallmark Club which is 97 residents strong. As a group, they donated 870 lbs. of can goods to the St. Louis Food Bank. These ladies, many of whom were volunteers in their local community before they moved to the Hallmark are able to give back and make a positive impact on the lives of others. They may not be able to drive any longer but The Hallmark affords them the opportunity to join together to make a difference. This gives them purpose in their lives, as well as a sense of being; they also have good old fun at their social events.

Our specific programming is only one advantage to our community. There are hundreds of examples of why this community is successful. The Hallmark is not just a building that houses seniors, it is a community of seniors that come together to live well. The addition of assisted living at The Hallmark would extend the opportunity for these seniors to have their Assisted Living needs met in the senior living community of their choosing. The Hallmark has received countless letters over the years from family members thanking the staff for making Mom or Dad's last years rewarding, meaningful and fulfilling. We would like to continue this tradition with the addition of Assisted Living.

**DIVIDER II – 9. 2015 Population Projections for the  
15 mile radius of service area**

**Hallmark of Creve Coeur  
1 New Ballas Place  
Creve Coeur, Missouri 63146**



ZIP	County	Tot. Pop	65+
63005	St. LouisCo	23,110	1,357
63010	Jefferson	42,934	5,713
63011	St. LouisCo	38,931	6,109
63017	St. LouisCo	40,635	8,646
63021	St. LouisCo	58,784	5,133
63025	St. LouisCo	13,777	1,311
63026	St. LouisCo	43,596	3,607
63031	St. LouisCo	44,982	7,302
63033	St. LouisCo	42,388	7,896
63034	St. LouisCo	18,401	2,320
63038	St. LouisCo	6,802	518
63040	St. LouisCo	12,638	849
63042	St. LouisCo	17,396	2,447
63043	St. LouisCo	20,648	2,559
63044	St. LouisCo	11,555	2,206
63049	Jefferson	15,706	1,511
63074	St. LouisCo	13,748	2,506
63088	St. LouisCo	10,782	1,266
63101	St. Louis City	1,306	348
63102	St. Louis City	2,198	183
63103	St. Louis City	3,847	727
63104	St. Louis City	19,475	1,412
63105	St. LouisCo	12,389	2,130
63106	St. Louis City	6,290	722
63107	St. Louis City	10,901	1,211
63108	St. Louis City	23,020	3,089
63109	St. Louis City	34,583	5,404
63110	St. Louis City	20,208	1,707
63111	St. Louis City	23,924	3,062
63112	St. Louis City	18,261	2,290
63113	St. Louis City	11,112	1,746
63114	St. LouisCo	33,765	5,465
63115	St. Louis City	23,174	3,655
63116	St. Louis City	55,704	6,282
63117	St. LouisCo	8,370	1,473
63118	St. Louis City	32,091	2,342
63119	St. LouisCo	32,411	7,187
63120	St. Louis City	10,805	1,128
63121	St. LouisCo	25,686	3,571
63122	St. LouisCo	34,990	7,763
63123	St. LouisCo	46,951	11,994
63124	St. LouisCo	9,140	2,880
63125	St. LouisCo	29,933	7,005
63126	St. LouisCo	13,696	3,676
63127	St. LouisCo	3,926	1,222
63128	St. LouisCo	28,557	6,802
63129	St. LouisCo	52,838	6,804
63130	St. LouisCo	32,684	4,014
63131	St. LouisCo	15,183	3,100
63132	St. LouisCo	12,101	2,171
63133	St. LouisCo	6,059	743
63134	St. LouisCo	10,824	1,486
63135	St. LouisCo	20,209	3,183
63136	St. LouisCo	48,810	5,942

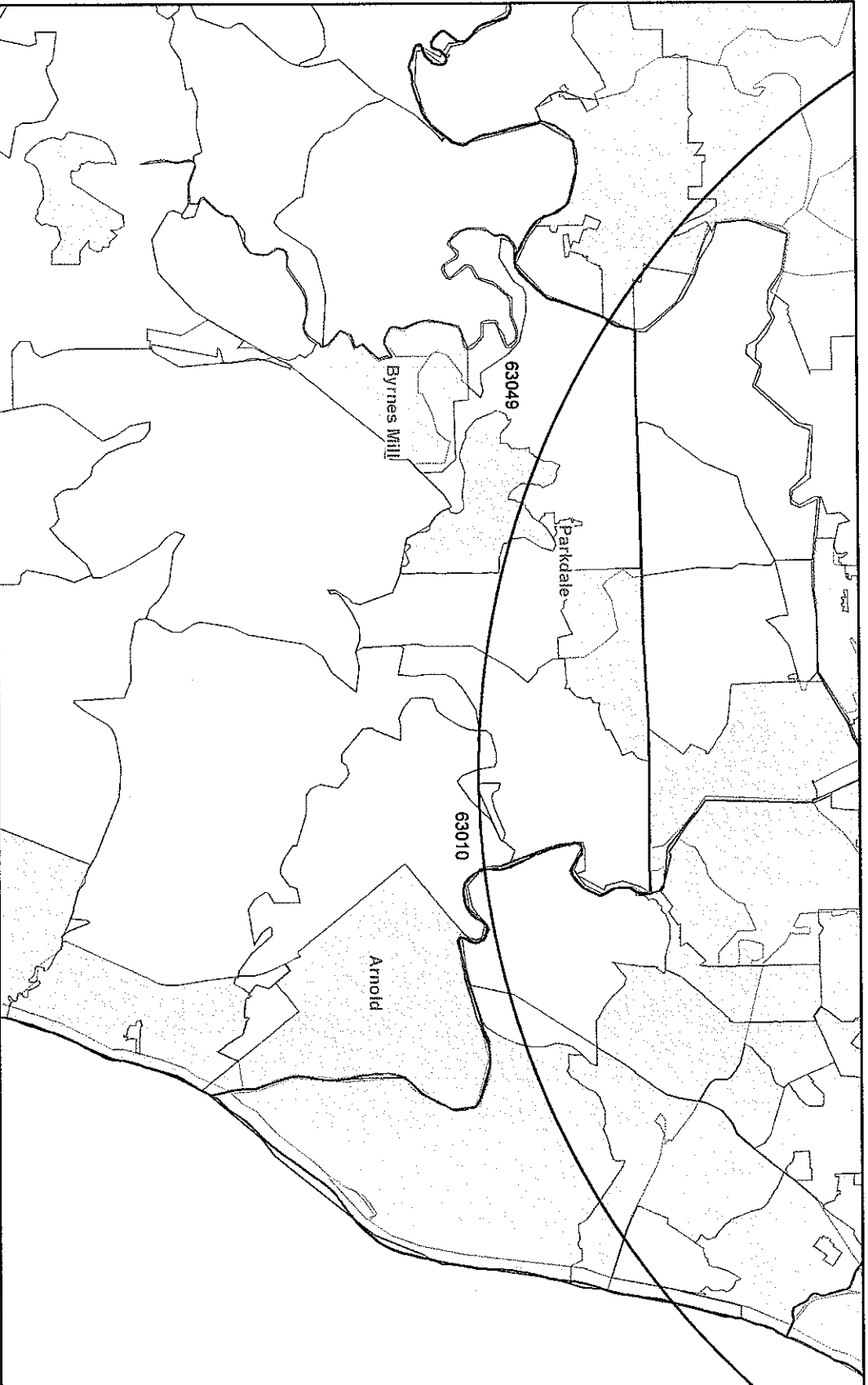
63137 St. LouisCo	20,032	3,735
63138 St. LouisCo	21,498	2,823
63139 St. Louis City	26,983	3,823
63140 St. LouisCo	646	64
63141 St. LouisCo	18,649	4,013
63143 St. LouisCo	9,346	1,028
63144 St. LouisCo	8,056	1,315
63146 St. LouisCo	28,037	5,507
63147 St. Louis City	15,610	1,650
63301 St. Charles	50,909	12,338
63303 St. Charles	58,223	8,987
63304 St. Charles	59,542	7,394
63341 St. Charles	4,867	657
63366 St. Charles	96,511	11,929
63376 St. Charles	93,751	11,046
<b>Total</b>	<b>1,764,894</b>	<b>263,484</b>

# CON 15 Mile Radius (City Map)

Hallmark of Creve Coeur

1 New Ballas Place

Creve Coeur, Missouri 63146





ZIP	County	City	Tot. Pop	65+
63010	Jefferson	Arnold city	21,227	3,436
63049	Jefferson	Byrnes Mill city	3,402	345
63049	Jefferson	Parkdale village	196	34
<b>Total</b>			<b>24,825</b>	<b>3,815</b>

**HALLMARK OF CREVE COEUR  
1 NEW BALLAS PLACE  
CREVE COEUR, MO 63146**

ZIP CODE	RADIUS	65+ TOTAL	CITIES IN ZIP	CITY POP	POP W/O CITY POP	% IN RADIUS	ZIP POP W/O CITIES	CITY POP IN RADIUS	TOTAL POP INSIDE RADIUS
63005	overlap	1,357				90			1,221
63010	out	5,713				0			0
63011	in	6,109				100			6,109
63017	in	8,646				100			8,646
63021	in	5,133				100			5,133
63025	overlap	1,311				60			787
63026	in	3,607				100			3,607
63031	in	7,302				100			7,302
63033	in	7,896				100			7,896
63034	overlap	2,320				70			1,624
63038	overlap	518				50			259
63040	in	849				100			849
63042	in	2,447				100			2,447
63043	in	2,559				100			2,559
63044	in	2,206				100			2,206
63049	overlap	1,511	Byrnes Mill/Parkdale	379	1,132	60	679	3	682
63074	in	2,506				100			2,506
63088	in	1,266				100			1,266
63101	in	348				100			348
63102	in	183				100			183
63103	in	727				100			727
63104	in	1,412				100			1,412
63105	in	2,130				100			2,130
63106	in	722				100			722
63107	in	1,211				100			1,211
63108	in	3,089				100			3,089
63109	in	5,404				100			5,404
63110	in	1,707				100			1,707

63111	in	3,062				100			3,062
63112	in	2,290				100			2,290
63113	in	1,746				100			1,746
63114	in	5,465				100			5,465
63115	in	3,655				100			3,655
63116	in	6,282				100			6,282
63117	in	1,473				100			1,473
63118	in	2,342				100			2,342
63119	in	7,187				100			7,187
63120	in	1,128				100			1,128
63121	in	3,571				100			3,571
63122	in	7,763				100			7,763
63123	in	11,994				100			11,994
63124	in	2,880				100			2,880
63125	in	7,005				100			7,005
63126	in	3,676				100			3,676
63127	in	1,222				100			1,222
63128	in	6,802				100			6,802
63129	overlap	6,804				40			2,722
63130	in	4,014				100			4,014
63131	in	3,100				100			3,100
63132	in	2,171				100			2,171
63133	in	743				100			743
63134	in	1,486				100			1,486
63135	in	3,183				100			3,183
63136	in	5,942				100			5,942
63137	in	3,735				100			3,735
63138	overlap	2,823				40			1,129
63139	in	3,823				100			3,823
63140	in	64				100			64
63141	in	4,013				100			4,013
63143	in	1,028				100			1,028
63144	in	1,315				100			1,315
63146	in	5,507				100			5,507
63147	in	1,650				100			1,650
63301	overlap	12,338				90			11,042

63303	in	8,987				100			8,987
63304	overlap	7,394				90			6,655
63341	overlap	657				50			329
63366	out	11,929				0			0
63376	overlap	11,046				90			9,941

**TOTAL                      263,484                      379                      1,132                      6,330                      679                      3                      234,154**

321146

DIVIDER II – 10. Community problems or unmet  
needs

**State of Missouri  
CON Application  
Brookdale Senior Living  
The Hallmark of Creve Coeur**

**Divider-II Proposal Description:**

**10. Identify specific community problems or unmet needs the proposal would address.**

Some of the current Hallmark residents have paid into their long term care insurance policies for years and want to be able to access this benefit while remaining at The Hallmark. In key studies on senior health, socialization has been identified as one of the keys to successful aging and wellness. Families who have had to move their parents to other communities after they have lived at The Hallmark for years, expressed concern that their parent had to start over making friends and fitting into a new environment. Change is hard for everyone, but especially for seniors. Making such a move after acclimating to life at The Hallmark can be devastating to seniors and their health. By adding a licensed assisted living component to The Hallmark, our current residents will be able to age in place minimizing disruption in their lives. Additionally, they will be able to financially take advantage of long term care insurance benefits without having to move from their established home.

Current residents of the Hallmark also may have physical and mental challenges that keep them from acclimating to another new environment (i.e., poor eyesight, diminished ambulation, depression, forgetfulness, etc.). Consistency in their environment, in their care and in their friends and staff members helps seniors to be the best they can be for as long as possible. Adding a licensed assisted living component to The Hallmark of Creve Coeur would be another positive step in assuring that residents will have such consistency.

DIVIDER II – 11. Utilization Projections through the first 3 years of operation of the new LTC beds.

\*Historical utilization projections for the past 3 years are N/A.

Divider II – 11

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
<b>Amount of Utilization</b>	13,323	14,600	14,600



DIVIDER II – 12. Methods and assumptions used to  
project utilizations

Divider II – 12

Utilization is in “Patient Days”. Initial fill up of licensed beds includes 36 internal transfers from existing IL building and 4 outside admissions.

DIVIDER II – 13. Documentation of consumer needs and preferences have been included in planning project and description how consumers had an opportunity to provide input.

**State of Missouri  
CON Application  
Brookdale Senior Living  
The Hallmark of Creve Coeur**

**Divider-II Proposal Description:**

**13. Document that consumer needs and preferences have been included in planning this project and describe how consumers had an opportunity to provide input.**

Our resident's and family member's needs and preferences have been the utmost priority in planning to license The Hallmark as an Assisted Living facility.

We have carefully reviewed our current population, met with residents and family members one on one and have identified key factors from which each of these residents would benefit once a license has been provided, should the need ever arise. Through detailed conversations with these individuals, we identified specific care needs this license will enable us to meet. We have also found immense support for the program from our residents and family members. During these interviews, residents unanimously expressed a desire to stay in their home at The Hallmark. None of them preferred to move. Their decision was supported by their families and loved ones.

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DIVIDER II – 14. Copies of letters of support

OFFICE OF THE  
MAYOR

HAROLD L. DIELMANN

## CITY OF CREVE COEUR

300 NORTH NEW BALLAS ROAD

CREVE COEUR, MISSOURI 63141

December 21, 2009

State of Missouri  
Department of Health & Senior Services  
Post Office Box 570  
Jefferson City, Missouri 65102

## To Whom It May Concern:

I would like to support the CON application for The Hallmark Creve Coeur to obtain an Assisted Living license from the State of MO. The Hallmark is presently an independent living community and accommodates many of our local seniors. They provide an exceptional quality of life for these seniors which will only be enhanced with the addition of an Assisted Living license.

The Hallmark of Creve Coeur has been a member of our community for over seven years. As the seniors who have moved in years ago, age in place, they may need additional medical oversight that an Assisted Living license will allow. I consider The Hallmark a valuable part of our community. We have many seniors in our local demographic who have been long-time residents of Creve Coeur and would like the opportunity to continue to live at The Hallmark.

Thank you for your consideration.

Sincerely,

Harold Dielmann  
Mayor  
City of Creve Coeur

815 Olive Street

Ste 100

St. Louis MO 63101

To Whom It May Concern:

When my mother, Charlotte Sherberg, moved to The Hallmark in September, she had just broken her pelvis and I did not think she would walk again.

Thanks to the care and attention provided to her, Mom is much stronger and walks without assistance. She has decided to make The Hallmark her permanent home which is a great relief to our family.

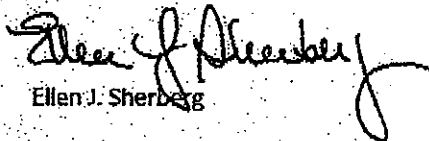
That's why I'm writing in support of The Hallmark's request to obtain an Assisted Living license from the State of Missouri.

Should my mother's condition deteriorate, I would like for her to stay in the same environment. The Hallmark has become a haven for her (and for us). We trust the care givers and the administrators.

I hope you'll look favorably on this petition. If you have any questions, please feel free to contact me directly at 314-421-8310 or [eshenberg@bizjournals.com](mailto:eshenberg@bizjournals.com).

Thank you for your consideration.

Sincerely yours,



Ellen J. Sherberg

Publisher

St. Louis Business Journal

LAW OFFICES OF  
**JOHN T. AHLQUIST, L.L.C.**

JOHN T. AHLQUIST, ATTORNEY  
MELISSA NIEWOEHNER, PARALEGAL  
JENNIFER KELAM, LEGAL SECRETARY

7711 BONHOMME AVE., SUITE 850  
ST. LOUIS, MISSOURI 63105

TELEPHONE: 314/862-5110  
FACSIMILE: 314/862-5943  
E-MAIL: jahquist@gabrielmail.com

December 1, 2009

Mr. John Webster  
Executive Director  
The Hallmark of Creve Coeur  
#1 New Ballas Place  
Creve Coeur, MO 63146

**Re: Final Matters and Payment for Rosalie A. Longo**

Dear John:

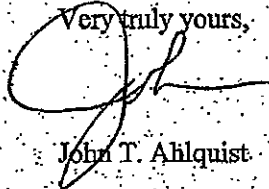
Enclosed please find a check drawn on the Rosalie Longo Revocable Trust in the amount of Three Thousand Nine Hundred Dollars (\$3,900.00) which is comprised of Two Thousand One Hundred Dollars (\$2,100.00) for August, September, and October of 2009 as well as One Hundred Dollars (\$100.00) maintenance and repair costs with respect to room 112 in assisted living. That amount of Six Thousand Four Hundred Dollars (\$6,400.00) has been reduced by the Two Thousand Five Hundred Dollar (\$2,500.00) security deposit leaving a balance due of Three Thousand Nine Hundred Dollars (\$3,900.00).

Every time I go by The Hallmark now it is strange to me because for over six (6) years, I continuously had one or more persons at The Hallmark that I was charged with taking care of. During those six (6) plus years, I can tell you that I was very satisfied with all of the services which Esther Haravitch, Andrew Haravitch, and Rosalie Longo received during their stays.

As you, I believe, are aware, I am the principal cheerleader and bell-ringer for The Hallmark and I'm sure, before long, I will have other individuals who will be the recipients of your fine service. Thank you so much!

If you have any questions or require anything additional, please feel free to call or write me at any time.

Very truly yours,



John T. Ahlquist

JTA/jak  
Enclosure

-65



The State of Missouri

**Subject:**

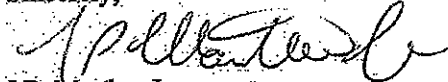
The Hallmark of Creve Coeur  
One New Ballas Place  
Creve Coeur, MO 63146

December 17, 2009

To Whom It May Concern,

In my conversations with senior management at The Hallmark, I understand they are seeking an Assisted Living license with the state. As attorney in fact for my father, Paul Martha, who is a resident at The Hallmark, I feel this is a positive step in becoming a full service provider in senior care. My father considers The Hallmark home and fully enjoys all that it has to offer. My father currently suffers from dementia and would most likely need to move to another facility if and most likely when his condition deteriorates. With the addition of assisted living my father would not need to move. I have already had to move my father once and it is a trying time for one with dementia and their loved ones. Furthermore, I am currently seeking guardianship for my father and this license would give me the ability to coordinate with The Hallmark the proper management of my father's affairs. From my perspective, being able to provide assistant living is an essential characteristic of senior living and The Hallmark should be afforded this opportunity. Please feel free to contact me if you would like to discuss further.

Sincerely,



J.P. Martha, Jr.

Email: [jmartha@patriotcoal.com](mailto:jmartha@patriotcoal.com)

Work: 314-275-3644

Mobile: 314-809-1845

Cc: Ray Leisure

-tbl-

Ray Leisner  
Director of Resident Services  
The Hallmark of Cuve Coeur  
One New Dallas Place  
Cuve Coeur, Mo. 63146

Dear Sir:

The residents of the Hallmark of Cuve Coeur would be most appreciative if our establishment could be granted a license for an "Assisted Living" section. For this, there is a great need.

We are an independent living establishment with approximately 200 plus residents, that range from sixty (60) to over 100 years of age.

At this time in life the need for assistance may come at any time. The ways things are now we must go elsewhere if the need should arise.

It would be much nicer and more convenient if we were able to remain in

our own establishment. It would give us peace of mind to be where we are known. It would also enable us to feel more secure.

Then too, we must consider our children. They would be more comfortable if we were where they had the satisfaction of knowing that we were in a place where they cared and where there was concern for the welfare of the patients.

So again, I ask that you will please consider granting a license for the purpose of establishing an "Assistant Living" section in our building.

Respectfully  
 Joan M. Bryant

To Who It May concern,  
There's a reason the Hallmark  
of Rev. Cawer, is referred to as the Hallmark  
Mother, a four year resident, and her four  
children, consider the Hallmark of the Finest Senior  
Living Apartments in the St. Louis Area.  
When Mom was advised there was a possibility she  
would have to move, due to the lack of an assisted living licence,  
we were all devastated to say the least. Mom loves her home  
here at the Hallmark, and wishes to remain here, should the  
need arise for more care... It would mean the world to  
Mom, to remain in her cozy private apartment, and not  
be forced into an institution type environment.  
Therefore, we implore you to grant the  
Hallmark of Rev. Cawer an assisted  
Living Licence.  
Mrs. Gloria Dulis &  
Family  
Edith Dulis &  
Nick Dulis &  
TTEE

# LARRY SHERBERG

2144 Lincoln Street  
Hollywood, Florida 33020

Mailing Address  
PO BOX 221650

Hollywood, Florida 33022

Phone 954-922-1995

Cellular 954-551-9267

Fax 954-923-1766

December 17, 2009

To whom it may concern;

I am writing to you as a son, whose mother resides at the Hallmark. My mother has resided there for three months. It has taken my sister and I a few years to convince my mother that her quality of life would improve if she moved to the Hallmark. Her life has improved and her mental status has improved by being in a congregate setting.

By allowing the Hallmark to obtain an assisted living license would give my family peace of mind. With the quality in which everything is done at the Hallmark, I am sure would carryover to the care in their assisted living unit.

Knowing my mother could get the assistance she may need as she ages in 'her' home is very important. Moving for the elderly is very traumatic, especially knowing that they most likely won't be going home again. I believe this is called 'aging in place'.

We grew up in Olivette, Mo. And to my knowledge there isn't an assisted living facility in the area. Even if there is, I would rather my mother stay where she presently is happy and has a network of friends.

Please allow the Hallmark to be licensed as a n Assisted Living Facility.

Sincerely,



Larry Sherberg

12/17/09

To Whom it may Concern,

This letter is being written in support of The Hallmark being given an assisted living license by the State of Missouri. Since my parents moved to the Hallmark two years ago, the state of their health has markedly deteriorated, though the staff has been extremely responsive, there are limitations due to the lack of assisted living options.

It is very difficult for people in their eighties to adjust to new environments. My parents have required the last two years to simply feel like the Hallmark is home. I would hate for them to have to "readjust" if options for them at the Hallmark run out. An assisted living floor would mean a lot to them and to us.

Thank you for your consideration of this very important issue.

Sincerely,  
Eddy Pearlstein

**DANA AND MICHAEL ALTER  
29 HILLVALE DRIVE  
SAINT LOUIS, MO 63105**

**December 17, 2009**

**Missouri Department of Health & Senior Services  
P.O. Box 570  
Jefferson City, Missouri 65102**

**Re: The Hallmark of Creve Coeur**

**To Whom It May Concern:**

**I am writing this letter in full support of The Hallmark of Creve Coeur's application to obtain an Assisted Living License from the State of Missouri.**

**My mother currently resides at The Hallmark and has done so since this past summer. She lives independently and, to the best of her abilities, avails herself of the many activities offered to the residents. Under the nurturing and supportive environment created by The Hallmark's management and staff, my mother is living in a flourishing environment where she has been able to make many new friends while caring for her own needs. My mother has found a comfortable home at The Hallmark and she would like to stay there as she continues to age and her need for assistance increases. I would strongly prefer that she remain in her friendly and known environment rather than having to disrupt her life in the later stages to find an assisted living facility that can accommodate her as the need arises. For that reason alone, my mother, and others like her, would benefit tremendously if the assistance she requires later in life can be delivered to her in the place where she currently lives and enjoys.**

**As much as I support The Hallmark's application on my mother's behalf, I support it even more for my father. The Hallmark was intended to be the home for both my parents when they moved to St. Louis. Unfortunately, due to an illness, my father is currently residing at The Cedars where he can receive rehabilitation with the expectations of returning to live at The Hallmark with my mother. Since my father will most likely need and benefit from an assisted living program, I am hopeful that those services can be provided at The Hallmark. This would allow my parents to**

- 2 -

**Missouri Department of Health & Senior Services**

**Page 2**

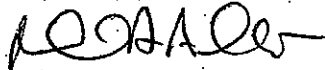
**December 17, 2009**

reside in the same building not only where their individual needs can be met but where they can both be together as they have been for many years. Under those circumstances, whatever assistance my parents need can be provided in one place by people who already know and gracefully care for them. Moreover, having my parents in the same building will speed along my father's recovery and greatly improve their quality of life.

I would also like to recognize the management and staff of The Hallmark as a superb team that can seamlessly and smartly incorporate an assisted living program into their current operations. The facility is well-managed, clean, and features a staff dedicated to the care of its residents. Everyone I have worked with at The Hallmark is professional, responsible and acutely dedicated to the well-being of the people they care for. In so many ways, The Hallmark exceeds the care and services of other similar facilities in the St. Louis area. To me, it makes practical and economic sense to issue them an assisted living license so its management and staff can continue to provide exceptional and necessary services to their residents as their residents continue to age and their daily living requirements increase.

I will be happy to discuss my comments in further detail and anytime. Please feel free to contact me on my cell phone at 314.283.3588.

Very truly yours,



**Michael D. Alter**



DECEMBER 17, 2009

To WHO IT MAY CONCERN,

I'm writing this letter to ask THE STATE OF MISSOURI TO GRANT THE HALLMARK CREVE COEUR AN ASSISTED LIVING LICENSE.

My father, NED SCHNEIDER, has LIVED AT THE HALLMARK SINCE JAN 2006. HE THRIVES ON HIS ROUTINES - CHANGE IS EXTREMELY DIFFICULT FOR HIM.

So it's important to my family THAT HE BE ABLE TO LIVE OUT HIS LIFE SURROUNDED BY

FAMILIAR FACES, FAMILIAR SCHEDULES AND A FEELING OF 'HOME'.

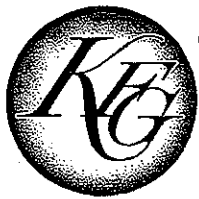
HE HAS MANY FRIENDS AT THE HALLMARK - SOMETHING THAT ADDS GREATLY TO HIS QUALITY OF LIFE. AN ASSISTED LIVING LICENSE WILL ALSO HAVE AN IMPACT IN MY QUALITY OF LIFE AS I KNOW THAT WHEN (NOTIF)

HE NEEDS MORE ASSISTANCE - IT WILL BE AT A PLACE HE'S CALLED HOME FOR 4 YEARS, AND WITH PEOPLE I HAVE COME TO TRUST AND RELY ON.

YOUR CONSIDERATION IS GREATLY APPRECIATED.

636-346-6331

REGARDS,  
HARRIET SCHNEIDER



# KEKERIS FINANCIAL GROUP

13537 Barrett Parkway Dr., Suite 300  
Manchester, MO 63021  
office 314.965.2626  
toll free 866.774.2626  
fax 314.965.2738

December 16, 2009

My father Constantine J. Kekeris currently lives at the Hallmark of Creve Coeur and we are very happy with his living arrangements. We are at the point in his life where he will need to move to an assisted living facility. As soon as The Hallmark is licensed to facilitate such an environment we will transfer his living arrangements to The Hallmarks assisted living area so we will not have to relocate due to his health. He will be able to stay in the same environment with the surroundings and people that he has befriended.

He and I look forward to the new accommodations and services that will be provided. His quality of life is mine and his main concern and that is one of the many reasons that we are happy about the transition at The Hallmark.

Sincerely,

William C. Kekeris

12/18/09

To: John Webster  
G. M. Hallmark  
One New Ballas Place  
ST. LOUIS Mo.

From: John Kelkerus

Ref: Assisted Living License

Mr Webster,

I am in Favor of acquiring an Assisted Living  
License for The Hallmark.

Being that my father C. J. Kelkerus is a resident,  
I think it will improve the quality of care for him  
and other residents.

Thank you and good luck.

Sincerely,

John Kelkerus



## ZEP MANUFACTURING COMPANY

2285 Grissom Drive  
St. Louis, Missouri 63146  
Post Office Box 1449  
Maryland Heights, Missouri 63043  
(314) 567-6166  
FAX (314) 567-7719

Jay LeVine  
Sales Representative

December 18, 2009

To whom it may concern,

I'm writing to offer my support towards the efforts of the Hallmark of Creve Coeur obtaining an Assisted Living license from the State of Missouri.

My name is Jay LeVine, and my 87 year old Mother Edith Tarkenton, has been a resident of Hallmark for almost 3 years. Recently Mom has experienced some health issues requiring physical therapy from the on-site staff and has made remarkable progress. I do believe that due to the aging process, she will have the need for assisted living.

Life at the Hallmark has been a godsend for both Mom and myself. The entire staff has made Mom feel special, as well as seeing to her every comfort.

Mom loves the many activity options that keep her alert and busy. Mom has made many friends here and looks forward to meeting with them each day in the dining room.



---

## ZEP MANUFACTURING COMPANY

2285 Grissom Drive  
St. Louis, Missouri 63146  
Post Office Box 1449  
Maryland Heights, Missouri 63043  
(314) 567-6166  
FAX (314) 567-7719

Jay Levine  
Sales Representative

Mom loves the Hallmark so much and has told me many times that she never wants to leave there. Should her health decline in the future requiring assistance, I hope she will be able to stay at the Hallmark.

Sincerely,  
Jay Levine

DIVIDER III – 2. For RCF/ALF beds, address the population-based bed need methodology of sixteen (16) beds per one thousand (1000) population age sixty-five (65) and older.

### **DIVIDER III --**

- 2. For RCF/ALF beds, address the population based need methodology of sixteen (16) beds per one thousand (1,000) population age sixty-five (65) and older.**

The population base need methodology is:

Unmet Need = (RXP)-U where

P = Year 2015 population in the service area

U = Number of service units in the service area; and

R = Community need rate of 16 beds per 100,000 (.016)

Population 65 years of age and older

$$\begin{aligned}\text{Unmet Need} &= (.016 \times 234,154) - 4,631 \\ &= 3,746 - 4,631 \\ &= -885 \text{ (surplus)}\end{aligned}$$



# L A S H L Y & B A E R, P. C.

## EXISTING ALF/RCF BEDS

<u>FACILITY</u>	<u># ALF BEDS</u>	<u># RCF BEDS</u>	<u>APPROVED</u>
Cori Manor Hcare & Rehab Ctr	0	22	
Lake St Chas Asst'd Lvng Apts	50	0	
Sunshine Home Care St. Charles	0	27	
Afton House (closed)	n/a	n/a	
Alexian Bros Sherbrooke Village	0	88	
Applegate Retirement home	0	38	
Akins Health Care, Inc	0	22	
Allways Kare Res Facility		20	
Benedict Joseph Labre Ctr		15	
Carondelet Ret Home		33	
Carrie Elligson Geitner		28	
Charless Home	16		
Chateau Ann Marie	0	20	
Chateau Ann Marie	2		X
Doorways Supportive Housing		36	
Dubourg House		69	
Elizabeth Place	20		X
Holly Hills Ret Home		15	
Hopewell Group Home		12	
KF Jammer Manor North	0	25	
Lindell Manor		24	
Loving Care Home		109	
Loving Care Home	2		X
Mary Ryder Home		80	
Ms B's Blessings	6		
Newstead Place		20	
Oasis Res Care West II		20	
Oasis Residential Facility	0	20	
Page Manor	49	0	
Provision Living at St Louis Hills	0	222	
Provision of Promise	0	20	
The Riverview	0	11	
Rosati Group Home	0	16	
Saddler Residential Care Facility II	22	0	
Saddler Residential Care Facility II	2		X
Silver Spur	34	0	
St Elizabeth Hall	50	0	
Superior Residential Care	0	30	
The Central Residence	0	41	

{LB-00318245.DOC-1} Attorneys at Law

714 Locust Street Saint Louis, Missouri 63101-1699 Telephone 314.621.2939

20 East Main Street Belleville, Illinois 62220-1602 Telephone 618.233.5587

Facsimile 314.621.6844 www.lashlybaer.com



Union Manor RCF	0	52	
West Pine Group Home	0	12	
Wilbar Boarding Home, Inx.	0	49	
Ashfield Activing Living & W	30		X
Autumn View Gardens	150	0	
Autumn View Gardens at Schuetz Rd	100	0	
The Boarding Inn	0	40	
Brentmoor Ret. Community	36	0	
The Bridge at Garden Plaza	102		X
Brooking Park	0	100	
Cape Albeon	100	0	
The Cedars at JCA	0	22	
Christian Care Home	0	18	
DeSmet Ret Community	0	90	
Dolan RCC at Les Maisons	40		X
Dolan RCC Conway Manor	18	0	
Dolan RCC Frontier Manor	10	0	
Dolan RCC Villa Manor	10	0	
The Dunn-Dunn House	0	10	
Fountain View at FVSouth Co	55		X
Fountain View at FVSouth Co	78	0	
Friendship Vill of West Co	22	0	
Green Park Res Ctr (closed)	n/a	n/a	
Jane Howell Stupp Apts	0	30	
KF Jammer Manor West	0	45	
Laclede Commons	0	260	
LSS at Meramec Bluffs	80	20	
LSS at Richmond Terrace	0	99	
MacKenzie Place at Deer Creek	77		X
Mason Manor	12	0	
McKnight Place Assd Living	110	0	
Mizpah Manor	0	35	
Mother of Perpetual Help	160	0	
Park Terrace Resident Center	0	120	
Reavis Road Senior Living	0		(surrendered)
Reavis Assisted Living	104		
Sabbath Manor	0	64	
Schuetz Manor	10	0	
Sienna House	0	16	
St Ann Assisted Liv Residence	40	0	
Sunrise of Chesterfield	3	0	
Sunrise Webster Groves	n/a		X
Surrey Place SNF/RCF	0	20	
Sylvan House	0	40	
Tesson Heights	0	72	
Veronica House	100	0	

Whispering Oaks	0	70	
Chestnut Glen	48	0	
Chestnut Glen	4		X
Harvester Rest Care, Inc.	0	38	
Lutheran Senior Svcs at Breeze Park	20	59	
Parkside Meadows, Inc.	0	36	
Spencer Place Assd Living	57	0	
The Villages of St Peters	52	0	
Lutheran Senior Svcs at Hidden Lake	0	80	
Nazareth Living Center	150	0	
Oasis West RCF	20		X
	2051	2580	
<b>TOTAL</b>	<b>4631</b>		

321147

-32-

DIVIDER III – 3. Document alternate need methodology used to determine the need of additional beds such as LTCH, Alzheimer's, mental health or other specialty beds.

DIVIDER III -

**3. Document any alternative need methodology used to determine the need for additional beds such as LTCH, Alzheimers, mental health or other specialty beds.**

The Committee has determined that the 16 beds per 1,000 population 65 years of age and older no longer appropriately address community need and has proposed changing the formula to 25 beds per 1,000 population age 65 years and older. Applying this new formula shows there is a need for additional beds in the service area.

$$\begin{aligned}\text{Unmet Need} &= (.025 \times 234,154) = 4,631 \\ &= 5,854 - 4,631\end{aligned}$$

$$\text{Unmet Need} = 1,223$$

In addition, the applicant currently operates 200 independent living units on the same site. Residents who are no longer capable of living independently have been forced to move out. Some residents, in an effort to remain, have used home health services to support them but they soon exceed their ability to remain in an independent living unit even with the support of home health. This project is to respond to requests by existing residents to remain in this Hallmark of Creve Coeur community. The request for 46 ALF beds is sized to meet the needs of Hallmark of Creve Coeur and not to develop a new, independent ALF facility.

DIVIDER IV- 1. Document that the proposed costs per square foot are reasonable when compared to the latest “RS Means Construction Cost data”

Divider IV - 1

Renovation cost at \$8.31 per square foot is less than  
the RS Means construction costs

**Pages 85-90 omitted**

DIVIDER IV- 2. Document that sufficient financing is available by providing a letter from a financial institution or an auditors statement indicating that sufficient funds are available.



The attached form 10Q of The Hallmark's parent company, Brookdale Senior Living Inc shows on page 4 that it has \$159,313,000 in unrestricted cash and cash equivalents.

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

**Form 10-Q**

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2009

or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 001-32641

**BROOKDALE SENIOR LIVING INC.**

*(Exact name of registrant as specified in its charter)*

Delaware  
*(State or other jurisdiction  
of incorporation or organization)*

20-3068069  
*(I.R.S. Employer Identification No.)*

111 Westwood Place, Suite 200, Brentwood, Tennessee  
*(Address of principal executive offices)*

37027  
*(Zip Code)*

(615) 221-2250  
*(Registrant's telephone number, including area code)*

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of October 30, 2009, 118,620,006 shares of the registrant's common stock, \$0.01 par value, were outstanding (excluding unvested restricted shares).

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BROOKDALE SENIOR LIVING INC.

FORM 10-Q

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**PART I. FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**BROOKDALE SENIOR LIVING INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(In thousands, except stock amounts)

	September 30, 2009 (Unaudited)	December 31, 2008
<b>Assets</b>		
<b>Current assets</b>		
Cash and cash equivalents	\$ 159,313	\$ 53,973
Cash and escrow deposits — restricted	104,434	86,723
Accounts receivable, net	81,583	91,646
Deferred tax asset	14,677	14,677
Prepaid expenses and other current assets, net	46,195	33,766
<b>Total current assets</b>	<b>406,202</b>	<b>280,785</b>
Property, plant and equipment and leasehold intangibles, net	3,620,469	3,697,834
Cash and escrow deposits — restricted	66,971	29,988
Investment in unconsolidated ventures	22,180	28,420
Goodwill	109,967	109,967
Other intangible assets, net	206,438	231,589
Other assets, net	69,455	70,675
<b>Total assets</b>	<b>\$ 4,501,682</b>	<b>\$ 4,449,258</b>
<b>Liabilities and Stockholders' Equity</b>		
<b>Current liabilities</b>		
Current portion of long-term debt	\$ 155,397	\$ 158,476
Current portion of line of credit	—	4,453
Trade accounts payable	42,541	29,105
Accrued expenses	184,873	170,366
Refundable entrance fees and deferred revenue	256,061	253,647
Tenant security deposits	14,920	29,965
<b>Total current liabilities</b>	<b>653,792</b>	<b>646,012</b>
Long-term debt, less current portion	2,304,168	2,235,000
Line of credit, less current portion	—	155,000
Deferred entrance fee revenue	81,221	76,410
Deferred liabilities	145,998	135,947
Deferred tax liability	159,389	178,647
Other liabilities	55,460	61,641
<b>Total liabilities</b>	<b>3,400,028</b>	<b>3,488,657</b>
<b>Commitments and contingencies</b>		
<b>Stockholders' Equity</b>		
Preferred stock, \$0.01 par value, 50,000,000 shares authorized at September 30, 2009 and December 31, 2008; no shares issued and outstanding	—	—
Common stock, \$0.01 par value, 200,000,000 shares authorized at September 30, 2009 and December 31, 2008; 124,386,194 and 106,467,764 shares issued and 123,174,893 and 105,256,463 shares outstanding (including 4,556,436 and 3,542,801 unvested restricted shares), respectively	1,232	1,053
Additional paid-in capital	1,876,783	1,690,851
Treasury stock, at cost; 1,211,301 shares at September 30, 2009 and December 31, 2008	(29,187)	(29,187)
Accumulated deficit	(746,176)	(700,720)
Accumulated other comprehensive loss	(998)	(1,396)
<b>Total stockholders' equity</b>	<b>1,101,654</b>	<b>960,601</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 4,501,682</b>	<b>\$ 4,449,258</b>

See accompanying notes to condensed consolidated financial statements.

**BROOKDALE SENIOR LIVING INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(Unaudited, in thousands, except per share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
<b>Revenue</b>				
Resident fees	\$ 503,856	\$ 480,750	\$ 1,499,544	\$ 1,435,522
Management fees	1,987	1,527	5,002	5,604
Total revenue	505,843	482,277	1,504,546	1,441,126
<b>Expense</b>				
Facility operating expense (excluding depreciation and amortization of \$45,851, \$45,670, \$137,102 and \$143,765, respectively)	328,939	322,601	963,637	934,186
General and administrative expense (including non-cash stock-based compensation expense of \$7,869, \$6,737, \$21,549 and \$23,368, respectively)	34,720	32,948	100,148	109,633
Hurricane and named tropical storms expense	—	3,613	—	3,613
Facility lease expense	68,036	67,017	204,211	202,028
Depreciation and amortization	66,983	67,066	202,378	207,882
Total operating expense	498,678	493,245	1,470,374	1,457,342
Income (loss) from operations	7,165	(10,968)	34,172	(16,216)
Interest income	623	1,383	1,771	6,169
Interest expense				
Debt	(30,574)	(37,599)	(96,845)	(110,894)
Amortization of deferred financing costs	(2,167)	(3,004)	(7,099)	(6,940)
Change in fair value of derivatives and amortization	(2,478)	(8,454)	1,137	(17,344)
Loss on extinguishment of debt	(1,178)	—	(2,918)	(3,052)
Equity in earnings (loss) of unconsolidated ventures	42	358	1,218	(750)
Other non-operating (expense) income	(52)	69	4,172	(424)
Loss before income taxes	(28,619)	(58,215)	(64,392)	(149,451)
Benefit for income taxes	7,329	22,338	18,936	54,996
Net loss	\$ (21,290)	\$ (35,877)	\$ (45,456)	\$ (94,455)
Basic and diluted loss per share	\$ (0.18)	\$ (0.36)	\$ (0.42)	\$ (0.93)
Weighted average shares used in computing basic and diluted loss per share	118,455	101,398	108,807	101,748
Dividends declared per share	\$ —	\$ 0.25	\$ —	\$ 0.75

See accompanying notes to condensed consolidated financial statements.

**BROOKDALE SENIOR LIVING INC.**  
**CONDENSED CONSOLIDATED STATEMENT OF EQUITY**  
(Unaudited, in thousands)

	<u>Common Stock</u>						
	Shares	Amount	Additional Paid-In- Capital	Treasury Stock	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total
Balances at January 1, 2009	105,256	\$ 1,053	\$ 1,690,851	\$ (29,187)	\$ (700,720)	\$ (1,396)	\$ 960,601
Compensation expense related to restricted stock and restricted stock unit grants	—	—	21,549	—	—	—	21,549
Net loss	—	—	—	—	(45,456)	—	(45,456)
Issuance of common stock under Associate Stock Purchase Plan	92	1	742	—	—	—	743
Restricted stock, net	1,780	18	(18)	—	—	—	—
Reclassification of net loss on derivatives into earnings	—	—	—	—	—	369	369
Amortization of payments from settlement of forward interest rate swaps	—	—	—	—	—	282	282
Issuance of common stock from equity offering, net	16,047	160	163,667	—	—	—	163,827
Other	—	—	(8)	—	—	(253)	(261)
Balances at September 30, 2009	123,175	\$ 1,232	\$ 1,876,783	\$ (29,187)	\$ (746,176)	\$ (998)	\$ 1,101,654

See accompanying notes to condensed consolidated financial statements.

**BROOKDALE SENIOR LIVING INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Unaudited, in thousands)

	Nine Months Ended September 30,	
	2009	2008
<b>Cash Flows from Operating Activities</b>		
Net loss	\$ (45,456)	\$ (94,455)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Loss on extinguishment of debt	2,918	3,052
Depreciation and amortization	209,477	214,822
Equity in (earnings) loss of unconsolidated ventures	(1,218)	750
Distributions from unconsolidated ventures from cumulative share of net earnings	455	1,918
Amortization of deferred gain	(3,259)	(3,257)
Amortization of entrance fees	(16,084)	(16,527)
Proceeds from deferred entrance fee revenue	23,225	15,210
Deferred income tax benefit	(19,440)	(57,243)
Change in deferred lease liability	12,073	15,675
Change in fair value of derivatives and amortization	(1,137)	17,344
Gain on sale of assets	(4,352)	—
Non-cash stock-based compensation	21,549	23,368
Changes in operating assets and liabilities:		
Accounts receivable, net	11,234	(18,165)
Prepaid expenses and other assets, net	(10,734)	1,263
Accounts payable and accrued expenses	29,557	3,051
Tenant refundable fees and security deposits	(14,297)	(439)
Deferred revenue	1,811	(3,392)
Other	(10,350)	4,379
Net cash provided by operating activities	185,972	107,354
<b>Cash Flows from Investing Activities</b>		
Decrease in lease security deposits and lease acquisition deposits, net	2,071	2,416
Increase in cash and escrow deposits—restricted	(54,694)	(7,795)
Net proceeds from the sale of property, plant and equipment	210	—
Additions to property, plant and equipment and leasehold intangibles, net of related payables	(87,507)	(134,179)
Acquisition of assets, net of related payables and cash received	(1,227)	(5,105)
(Issuance of) payment on notes receivable, net	(590)	39,661
Investment in unconsolidated ventures	(1,246)	(1,163)
Distributions received from unconsolidated ventures	969	300
Proceeds from sale leaseback transaction	9,166	—
Proceeds from sale of unconsolidated venture	8,831	4,165
Net cash used in investing activities	(124,017)	(101,700)
<b>Cash Flows from Financing Activities</b>		
Proceeds from debt	67,986	467,769
Repayment of debt and capital lease obligation	(21,194)	(229,210)
Proceeds from line of credit	60,446	264,757
Repayment of line of credit	(219,899)	(378,000)
Payment of dividends	—	(103,696)
Purchase of treasury stock	—	(29,187)
Payment of financing costs, net of related payables	(7,258)	(13,720)
Proceeds from public equity offering, net	163,827	—
Other	(713)	(1,373)
Refundable entrance fees:		
Proceeds from refundable entrance fees	17,032	15,185
Refunds of entrance fees	(16,842)	(14,331)
Recouping and payment of swap termination	—	(27,627)
Cash portion of loss on extinguishment of debt	—	(1,240)
Net cash provided by (used in) financing activities	43,385	(50,673)
Net increase (decrease) in cash and cash equivalents	105,340	(45,019)
Cash and cash equivalents at beginning of period	53,973	100,904
Cash and cash equivalents at end of period	\$ 159,313	\$ 55,885

See accompanying notes to condensed consolidated financial statements.



**BROOKDALE SENIOR LIVING INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
(Unaudited)

**1. Description of Business**

Brookdale Senior Living Inc. ("Brookdale", "BSL" or the "Company") is a leading owner and operator of senior living communities throughout the United States. The Company provides an exceptional living experience through properties that are designed, purpose-built and operated to provide the highest quality service, care and living accommodations for residents. The Company owns, leases and operates retirement centers, assisted living and dementia-care communities and continuing care retirement centers ("CCRCs").

**2. Summary of Significant Accounting Policies**

***Basis of Presentation***

The accompanying unaudited interim condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission for quarterly reports on Form 10-Q. In the opinion of management, these financial statements include all adjustments necessary to present fairly the financial position, results of operations and cash flows of the Company as of September 30, 2009, and for all periods presented. The condensed consolidated financial statements are prepared on the accrual basis of accounting. All adjustments made have been of a normal and recurring nature. Certain information and footnote disclosures normally included in annual financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted. The Company believes that the disclosures included are adequate and provide a fair presentation of interim period results. Interim financial statements are not necessarily indicative of the financial position or operating results for an entire year. It is suggested that these interim financial statements be read in conjunction with the audited financial statements and the notes thereto, together with management's discussion and analysis of financial condition and results of operations, included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2008, as filed with the Securities and Exchange Commission.

***Revenue Recognition***

***Resident Fees***

Resident fee revenue is recorded when services are rendered and consist of fees for basic housing, support services and fees associated with additional services such as personalized health and assisted living care. Residency agreements are generally for a term of 30 days to one year, with resident fees billed monthly in advance. Revenue for certain skilled nursing services and ancillary charges is recognized as services are provided and is billed monthly in arrears.

***Entrance Fees***

Certain of the Company's communities have residency agreements which require the resident to pay an upfront fee prior to occupying the community. In addition, in connection with the Company's MyChoice program, new and existing residents are allowed to pay additional entrance fee amounts in return for a reduced monthly service fee. The non-refundable portion of the entrance fee is recorded as deferred revenue and amortized over the estimated stay of the resident based on an actuarial valuation. The refundable portion of a resident's entrance fee is generally refundable within a certain number of months or days following contract termination or in certain agreements, upon the resale of the resident's unit or a comparable unit or 12 months after the resident vacates the unit. In such instances the refundable portion of the fee is not amortized and included in refundable entrance fees and deferred revenue.

Certain contracts require the refundable portion of the entrance fee plus a percentage of the appreciation of the unit, if any, to be refunded only upon resale of a comparable unit ("contingently refundable"). Upon resale the Company may receive reoccupancy proceeds in the form of additional contingently refundable fees, refundable fees, or non-refundable fees. The Company estimates the amount of reoccupancy proceeds to be received from additional

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contingently refundable fees or non-refundable fees and records such amount as deferred revenue. The deferred revenue is amortized over the life of the community and was approximately \$62.2 million and \$63.4 million at September 30, 2009 and December 31, 2008, respectively. All remaining contingently refundable fees not recorded as deferred revenue and amortized are included in refundable entrance fees and deferred revenue.

All refundable amounts due to residents at any time in the future, including those recorded as deferred revenue, are classified as current liabilities.

The non-refundable portion of entrance fees expected to be earned and recognized in revenue in one year is recorded as a current liability. The balance of the non-refundable portion is recorded as a long-term liability.

### *Community Fees*

Substantially all community fees received are non-refundable and are recorded initially as deferred revenue. The deferred amounts, including both the deferred revenue and the related direct resident lease origination costs, are amortized over the estimated stay of the resident which is consistent with the implied contractual terms of the resident lease.

### *Management Fees*

Management fee revenue is recorded as services are provided to the owners of the communities. Revenues are determined by an agreed upon percentage of gross revenues (as defined).

### *Fair Value Measurements*

Cash and cash equivalents, cash and escrow deposits-restricted and derivative financial instruments are reflected in the accompanying condensed consolidated balance sheets at amounts considered by management to reasonably approximate fair value. Management estimates the fair value of its long-term debt using a discounted cash flow analysis based upon the Company's current borrowing rate for debt with similar maturities and collateral securing the indebtedness. The Company had outstanding debt with a carrying value of \$2.5 billion and \$2.6 billion as of September 30, 2009 and December 31, 2008, respectively. The fair value of debt both as of September 30, 2009 and December 31, 2008 was \$2.4 billion.

The Financial Accounting Standards Board (FASB) guidance on Fair Value Measurement establishes a three-level valuation hierarchy for disclosure of fair value measurements. The valuation hierarchy is based upon the transparency of inputs to the valuation of an asset or liability as of the measurement date. A financial instrument's categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement. The three levels are defined as follows:

Level 1 – Inputs to the valuation methodology are quoted prices (unadjusted) for identical assets or liabilities in active markets.

Level 2 – Inputs to the valuation methodology include quoted prices for similar assets and liabilities in active markets, and inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the financial instrument.

Level 3 – Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The Company's derivative positions are valued using models developed internally by the respective counterparty that use as their basis readily observable market parameters (such as forward yield curves) and are classified within Level 2 of the valuation hierarchy.

The Company considers its own credit risk as well as the credit risk of its counterparties when evaluating the fair value of its derivatives. Any adjustments resulting from credit risk are recorded as a change in fair value of derivatives and amortization in the current period statement of operations (Note 16).

### ***Self-Insurance Liability Accruals***

The Company is subject to various legal proceedings and claims that arise in the ordinary course of its business. Although the Company maintains general liability and professional liability insurance policies for its owned, leased and managed communities under a master insurance program, the Company's current policies provide for deductibles for each claim (\$3.0 million on or prior to December 31, 2008 and \$250,000 effective January 1, 2009). As a result, the Company is, in effect, self-insured for most claims. In addition, the Company maintains a self-insured workers compensation program and a self-insured employee medical program for amounts below excess loss coverage amounts, as defined. The Company reviews the adequacy of its accruals related to these liabilities on an ongoing basis, using historical claims, actuarial valuations, third party administrator estimates, consultants, advice from legal counsel and industry data, and adjusts accruals periodically. Estimated costs related to these self-insurance programs are accrued based on known claims and projected claims incurred but not yet reported. Subsequent changes in actual experience are monitored and estimates are updated as information is available.

### ***Treasury Stock***

The Company accounts for treasury stock under the cost method and includes treasury stock as a component of stockholders' equity.

### ***New Accounting Pronouncements***

The Company follows accounting standards set by the FASB. The FASB sets generally accepted accounting principles ("GAAP") that the Company follows to ensure consistent reporting of its financial condition, results of operations and cash flows. References to GAAP issued by the FASB in these footnotes are to the FASB Accounting Standards Codification, sometimes referred to as the Codification or ASC. The FASB finalized the Codification effective for periods ending on or after September 15, 2009. The Codification does not change how the Company accounts for its transactions or the nature of related disclosures made.

The FASB guidance on Business Combinations was effective for business combinations with an acquisition date on or after January 1, 2009 and is to be applied prospectively. The guidance was issued to improve the relevance, representational faithfulness, and comparability of the information that a reporting entity provides in its financial reports about a business combination and its effects. It establishes principles and requirements for how the acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree, recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase and determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. As of September 30, 2009, this guidance has not had a material impact on the condensed consolidated financial statements.

The Company adopted the provisions of the FASB guidance on Consolidations relating to the accounting for noncontrolling interests on January 1, 2009. This guidance amends previous authoritative guidance by requiring companies to report a noncontrolling interest in a subsidiary as equity in its consolidated financial statements. Disclosure of the amounts of consolidated net income attributable to the parent and the noncontrolling interest are required. This guidance also clarifies that transactions that result in a change in a parent's ownership interest in a subsidiary that do not result in deconsolidation will be treated as equity transactions, while a gain or loss will be recognized by the parent when a subsidiary is deconsolidated. Other than the required disclosures, the adoption had no impact on the condensed consolidated financial statements.

In February 2008, the FASB issued guidance which delays the effective date of the FASB guidance on Fair Value Measurements for all nonfinancial assets and liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). The guidance partially defers the effective date of the FASB guidance to fiscal years beginning after November 15, 2008 and as a result was effective for the Company beginning January 1, 2009. The adoption of the guidance had no impact on the condensed consolidated financial statements.

The Company adopted the provision of the FASB guidance on disclosures relating to Derivatives and Hedging on January 1, 2009. This guidance requires entities to provide enhanced disclosures about how and why an entity uses derivative instruments, how derivative instruments and related hedge items are accounted for and how derivative

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instruments and related hedged items affect an entity's financial position, results of operations and cash flows. Other than the required disclosures, the adoption had no impact on the condensed consolidated financial statements.

The Company adopted the provisions of the guidance relating to the Determination of the Useful Life of Intangible Assets on January 1, 2009. This guidance amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset and provides for enhanced disclosures regarding intangible assets. The intent of this guidance is to improve the consistency between the useful life of a recognized intangible asset and the period of expected cash flows used to measure the fair value of the asset. The disclosure provisions are effective as of the adoption date and the guidance for determining the useful life applies prospectively to all intangible assets acquired after the effective date. The adoption had no impact on the condensed consolidated financial statements.

The Company adopted the provisions of Emerging Issues Task Force ("EITF") guidance on Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities on January 1, 2009. The EITF provides that unvested share-based payment awards that contain nonforfeitable rights to dividends or dividend equivalents (whether paid or unpaid) are participating securities and shall be included in the computation of earnings per share. The adoption did not have a material impact on the condensed consolidated financial statements.

The Company adopted the guidance relating to Interim Disclosures about Fair Value of Financial Instruments on June 1, 2009. This guidance requires disclosures about fair value of financial instruments for interim periods of publicly traded companies as well as in annual financial statements. Other than the required disclosures, the adoption had no impact on the condensed consolidated financial statements.

The Company adopted the guidance related to the Accounting for Assets Acquired and Liabilities Assumed in a Business Combination that Arise from Contingencies effective January 1, 2009. The guidance amends and clarifies guidance previously issued on Business Combinations and addresses application issues on initial recognition and measurement, subsequent measurement and accounting, and disclosure of assets and liabilities arising from contingencies in a business combination. The Company had no acquisitions during the nine months ended September 30, 2009; therefore, the adoption of the guidance had no impact on the condensed consolidated financial statements.

In May 2009, the FASB issued guidance on Subsequent Events. This guidance establishes general standards of accounting for and disclosure of events that occur after the balance sheet date but before the financial statements are issued or are available to be issued. Although the guidance is based on the same principles as those that currently exist in the auditing standards, it includes a new required disclosure of the date through which an entity has evaluated subsequent events. The Company adopted this guidance in June 2009 and other than the required disclosures, the adoption had no impact on the condensed consolidated financial statements.

In June 2009, the FASB issued guidance which amends previously issued guidance on the Consolidation of Variable Interest Entities. This guidance changes how a company determines when an entity that is insufficiently capitalized or is not controlled through voting (or similar rights) should be consolidated. The determination of whether a company is required to consolidate an entity is based on, among other things, an entity's purpose and design and a company's ability to direct the activities of the entity that most significantly impacts the entity's economic performance. The guidance is effective for the Company beginning January 1, 2010. The Company is currently evaluating the impact its provisions will have on its condensed consolidated financial statements.

### ***Dividends***

On December 30, 2008, the Company's board of directors voted to suspend the Company's quarterly cash dividend indefinitely.

### ***Reclassifications***

Certain prior period amounts have been reclassified to conform to the current financial statement presentation, with no effect on the Company's condensed consolidated financial position or results of operations.

### 3. Earnings Per Share

Basic earnings per share ("EPS") is calculated by dividing net income by the weighted average number of shares of common stock outstanding. Diluted EPS includes the components of basic EPS and also gives effect to dilutive common stock equivalents. For purposes of calculating basic and diluted earnings per share, vested restricted stock awards are considered outstanding. Under the treasury stock method, diluted EPS reflects the potential dilution that could occur if securities or other instruments that are convertible into common stock were exercised or could result in the issuance of common stock. Potentially dilutive common stock equivalents include unvested restricted stock and restricted stock units.

During the three and nine months ended September 30, 2009 and September 30, 2008, the Company reported a consolidated net loss. As a result of the net loss, unvested restricted stock and restricted stock unit awards were antidilutive for each period and were not included in the computation of diluted weighted average shares. The weighted average restricted stock and restricted stock unit grants excluded from the calculations of diluted net loss per share was 2.0 million and 1.4 million for the three months ended September 30, 2009 and 2008, respectively, and 1.2 million and 1.4 million for the nine months ended September 30, 2009 and 2008, respectively.

### 4. Stock-Based Compensation

The Company recorded \$7.9 million and \$6.7 million of compensation expense in connection with grants of restricted stock and restricted stock units for the three months ended September 30, 2009 and 2008, respectively, and \$21.5 million and \$23.4 million of such expense for the nine months ended September 30, 2009 and 2008, respectively. For the three and nine months ended September 30, 2009 and 2008, compensation expense was calculated net of forfeitures estimated from 0% - 6% of the shares granted.

For all awards with graded vesting other than awards with performance-based vesting conditions, the Company records compensation expense for the entire award on a straight-line basis over the requisite service period. For graded-vesting awards with performance-based vesting conditions, total compensation expense is recognized over the requisite service period for each separately vesting tranche of the award as if the award is, in substance, multiple awards once the performance target is deemed probable of achievement. Performance goals are evaluated quarterly. If such goals are not ultimately met or it is not probable the goals will be achieved, no compensation expense is recognized and any previously recognized compensation expense is reversed.

During the current year, the Company issued restricted stock units to its Chief Executive Officer. Under the terms of the award agreement, upon vesting, each restricted stock unit represents the right to receive one share of the Company's common stock.

Current year grants of restricted shares and restricted stock units under the Company's Omnibus Stock Incentive Plan were as follows (amounts in thousands except for value per share):

	Shares / Restricted Stock Units Granted	Value Per Share	Total Value
Three months ended March 31, 2009	84	\$ 3.48 - \$6.15	\$ 301
Three months ended June 30, 2009	2,562	\$ 5.14 - \$9.39	\$ 24,030
Three months ended September 30, 2009	65	\$ 9.83 - \$10.71	\$ 694

The Company has an employee stock purchase plan for all eligible employees. The plan became effective on October 1, 2008. Under the plan, eligible employees of the Company can purchase shares of the Company's common stock on a quarterly basis at a discounted price through accumulated payroll deductions. Each eligible employee may elect to deduct up to 15% of his or her base pay each quarter. Subject to certain limitations specified in the plan, on the last trading date of each calendar quarter, the amount deducted from each participant's pay over the course of the quarter will be used to purchase whole shares of the Company's common stock at a purchase price equal to 90% of the closing market price on the New York Stock Exchange on such date. Initially, the Company has reserved 1,000,000 shares of common stock for issuance under the plan. The employee stock purchase plan also contains an "evergreen" provision that automatically increases the number of shares reserved for issuance under the plan by 200,000 shares on the first day of each calendar year beginning January 1, 2010. The impact on the Company's current year condensed consolidated financial statements is not material.

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## 5. Goodwill and Other Intangible Assets, Net

There were no changes in the carrying amount of goodwill for the nine months ended September 30, 2009. Goodwill by operating segment as of September 30, 2009 and December 31, 2008 was as follows (dollars in thousands):

	Retirement Centers	Assisted Living	Total
Goodwill	\$ 7,155	\$ 102,812	\$ 109,967

Goodwill is tested for impairment annually with a test date of October 1 or sooner if indicators of impairment are present. No indicators of impairment were present during the nine months ended September 30, 2009.

Intangible assets with definite useful lives are amortized over their estimated lives and are tested for impairment whenever indicators of impairment arise. The following is a summary of other intangible assets at September 30, 2009 and December 31, 2008 (dollars in thousands):

	September 30, 2009			December 31, 2008		
	Gross Carrying Amount	Accumulated Amortization	Net	Gross Carrying Amount	Accumulated Amortization	Net
Community purchase options	\$ 147,682	\$ (9,245)	\$ 138,437	\$ 147,682	\$ (6,457)	\$ 141,225
Management contracts and other	158,041	(101,538)	56,503	158,041	(77,807)	80,234
Home health licenses	11,498	—	11,498	10,130	—	10,130
Total	\$ 317,221	\$ (110,783)	\$ 206,438	\$ 315,853	\$ (84,264)	\$ 231,589

Amortization expense related to definite-lived intangible assets for the three months ended September 30, 2009 and 2008 was \$8.7 million and \$8.9 million, respectively, and \$26.5 million and \$26.7 million of amortization expense was recorded for the nine months ended September 30, 2009 and 2008, respectively. Home health licenses were determined to be indefinite-lived intangible assets and are not subject to amortization.

## 6. Property, Plant and Equipment and Leasehold Intangibles, Net

Property, plant and equipment and leasehold intangibles, net, which include assets under capital leases, consist of the following (dollars in thousands):

	September 30, 2009	December 31, 2008
Land	\$ 252,297	\$ 253,453
Buildings and improvements	2,736,184	2,626,079
Furniture and equipment	301,577	277,680
Resident and operating lease intangibles	625,228	607,256
Construction in progress	16,741	98,418
Assets under capital and financing leases	575,351	555,872
	4,507,378	4,418,758
Accumulated depreciation and amortization	(886,909)	(720,924)
Property, plant and equipment and leasehold intangibles, net	\$ 3,620,469	\$ 3,697,834

## 7. Sale-Leaseback Transaction

On March 2, 2009, the Company entered into a sale-leaseback transaction with a third party lessor for the sale and leaseback of one of its skilled nursing facilities. The Company sold the facility for a total of \$10.0 million and immediately leased the facility back. Under the terms of the lease agreement, the Company will continue to operate the facility until December 31, 2019. The lease is accounted for as an operating lease.

## 8. Debt

### Long-term Debt, Capital Leases and Financing Obligations

Long-term debt, capital leases and financing obligations consist of the following (dollars in thousands):

	September 30, 2009	December 31, 2008
Mortgage notes payable due 2009 through 2039; weighted average interest rate of 4.64% for the nine months ended September 30, 2009 (weighted average interest rate of 5.33% in 2008)	\$ 1,325,029	\$ 1,246,204
\$150,000 Series A notes payable, secured by five communities and by a \$3.0 million letter of credit, bearing interest at LIBOR plus 0.88%, payable in monthly installments of interest only until August 2011 and payable in monthly installments of principal and interest through maturity in August 2013	150,000	150,000
Mortgages payable due 2012; weighted average interest rate of 5.64% for the nine months ended September 30, 2009 (weighted average interest rate of 5.64% in 2008), payable interest only through July 2010 and payable in monthly installments of principal and interest through maturity in July 2012, secured by the underlying assets of the portfolio	212,407	212,407
Variable rate tax-exempt bonds credit-enhanced by Fannie Mae; weighted average interest rate of 1.91% for the nine months ended September 30, 2009 (weighted average interest rate of 4.40% in 2008), due 2032, payable interest only until maturity, secured by the underlying assets of the portfolio	100,841	100,841
Capital and financing lease obligations payable through 2020; weighted average interest rate of 8.82% for the nine months ended September 30, 2009 (weighted average interest rate of 8.81% in 2008)	323,474	318,440
Mortgage note, bearing interest at a variable rate of LIBOR plus 0.70%, payable interest only through maturity in August 2012. The note is secured by 15 of the Company's communities and an \$11.5 million guaranty by the Company	315,180	315,180
Construction financing due 2011 through 2023; weighted average interest rate of 7.63% for the nine months ended September 30, 2009 (weighted average interest rate of 6.02% in 2008)	32,634	50,404
Total debt	2,459,565	2,393,476
Less current portion	155,397	158,476
Total long-term debt	\$ 2,304,168	\$ 2,235,000

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Although certain debt obligations are scheduled to mature on or prior to September 30, 2010, the Company has the option, subject to the satisfaction of customary conditions (such as the absence of a material adverse change), to extend the maturity of approximately \$131.0 million of certain non-recourse mortgages payable until 2011, as the instruments associated with these mortgages payable provide that the Company can extend the respective maturity dates for one 12 month term each from the existing maturity dates.

### *Credit Facilities*

On February 27, 2009, the Company entered into a Second Amended and Restated Credit Agreement with Bank of America, N.A., as administrative agent, Banc of America Securities LLC, as sole lead arranger and book manager, and the several lenders from time to time parties thereto. The amended credit agreement amended and restated the Company's \$245.0 million secured line of credit and terminated the associated \$80.0 million letter of credit facility.

The amended credit agreement initially consisted of a \$230.0 million revolving loan facility with a \$25.0 million letter of credit sublimit and is scheduled to mature on August 31, 2010.

Pursuant to the terms of the amended credit agreement, certain of the Company's subsidiaries, as guarantors, will guarantee obligations under the amended credit agreement and the other loan documents. Further, in connection with the amended credit agreement, (i) the Company and certain guarantors executed and delivered a Pledge Agreement in favor of the administrative agent for the banks and other financial institutions from time to time parties to the amended credit agreement, pursuant to which such guarantors pledged certain assets for the benefit of the secured parties as collateral security for the payment and performance of the Company's obligations under the amended credit agreement and the other loan documents and (ii) certain guarantors granted mortgages and executed and delivered a Security Agreement, in each case, in favor of the administrative agent for the banks and other financial institutions from time to time parties to the amended credit agreement encumbering certain real and personal property of such guarantors. The collateral includes, among other things, certain real property and related personal property owned by the guarantors, equity interests in certain of the Company's subsidiaries, all related books and records and, to the extent not otherwise included, all proceeds and products of any and all of the foregoing.

At the option of the Company, amounts drawn under the revolving loan facility initially bore interest at either (i) LIBOR plus a margin of 7.0% or (ii) the greater of (a) the Bank of America prime rate or (b) the Federal Funds rate plus 0.5%, plus a margin of 7.0%. For purposes of determining the interest rate, in no event shall the base rate or LIBOR be less than 3.0%. In connection with the loan commitments, the Company will pay a quarterly commitment fee of 1.0% per annum on the average daily amount of undrawn funds. The Company was initially required to pay a fee equal to 7.0% of the amount of any issued and outstanding letters of credit; provided, with respect to drawable amounts that have been cash collateralized, the letter of credit fee shall be payable at a rate per annum equal to 2.0%.

The amended credit agreement contains typical representations and covenants for loans of this type, including restrictions on the Company's ability to pay dividends, make distributions, make acquisitions, incur capital expenditures, incur new liens or repurchase shares of the Company's common stock. The amended credit agreement also contains financial covenants, including covenants with respect to maximum consolidated adjusted leverage, minimum consolidated fixed charge coverage, minimum tangible net worth, and maximum total capital expenditures. A violation of any of these covenants (including any failure to remain in compliance with any financial covenants contained therein) could result in a default under the amended credit agreement, which would result in termination of all commitments and loans under the amended credit agreement and all other amounts owing under the amended credit agreement and certain other loan agreements becoming immediately due and payable.

On June 1, 2009, in connection with the equity offering described in Note 15, the Company entered into the First Amendment to the Second Amended and Restated Credit Agreement (the "First Amendment") pursuant to which the maximum revolving loans that can be outstanding at any time under the amended credit agreement was reduced to \$75.0 million. In addition, the interest rate margin on loans, as well as fees on letters of credit, as a result of the maximum amount of the facility having been reduced to \$75.0 million, was reduced to 6.0%.

Pursuant to the First Amendment, the Company has been given greater flexibility to make acquisitions by increasing aggregate permitted cash consideration from \$10.0 million to \$100.0 million, to make capital expenditures up to \$30.0 million per quarter and to incur an additional \$20.0 million in liens and letters of credit.



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As of September 30, 2009, the Company has an available secured line of credit of \$75.0 million (including a \$25.0 million letter of credit sublimit) and separate unsecured letter of credit facilities of up to \$48.5 million in the aggregate. As of September 30, 2009, there were no borrowings under the revolving loan facility, \$23.7 million of letters of credit had been issued under the amended credit facility, and \$48.5 million of letters of credit had been issued under the separate unsecured letter of credit facilities.

In late 2008, the Company began replacing some of its outstanding letters of credit with restricted cash in order to reduce the Company's letter of credit needs.

### *Financings*

On January 30, 2009, the Company amended and restated a \$52.6 million first mortgage loan, secured by the underlying properties, which was payable interest only through maturity in March 2009. Pursuant to the amendment, the maturity date has been extended to March 31, 2011. The amended and restated loan bears interest at LIBOR plus 4.0% and requires principal amortization. In connection with the amendment, the Company made a \$3.0 million payment to reduce the outstanding principal amount of the loan.

On February 25, 2009, the Company amended a \$41.0 million first mortgage loan, secured by the underlying properties, which was payable interest only through maturity in June 2009. Pursuant to the amendment, the maturity date has been extended to June 2011. The amended loan is evidenced by two promissory notes, the first of which is in the principal amount of \$26.0 million and bears interest at LIBOR plus 3.0%. The second promissory note is in the amount of \$15.0 million and bears interest at LIBOR plus 5.6%. Both notes require principal amortization. In connection with the amendment, the Company made a \$2.0 million payment to reduce the outstanding principal amount of the \$26.0 million loan.

Effective May 11, 2009, the Company exercised its option to extend the maturity date of \$131.0 million of mortgage notes from May 11, 2009 to May 11, 2010. No other terms of the notes were changed in connection with the extension.

As of September 30, 2009, the Company is in compliance with the financial covenants of its outstanding debt and lease agreements.

### *Interest Rate Swaps and Caps*

In the normal course of business, a variety of financial instruments are used to manage or hedge interest rate risk. Interest rate protection and swap agreements were entered into to effectively cap or convert floating rate debt to a fixed rate basis, as well as to hedge anticipated future financing transactions. Pursuant to the hedge agreements, the Company is required to secure its obligation to the counterparty if the fair value liability exceeds a specified threshold. Cash collateral pledged to the Company's counterparties was \$18.1 million and \$13.9 million as of September 30, 2009 and December 31, 2008, respectively.

All derivative instruments are recognized as either assets or liabilities in the condensed consolidated balance sheets at fair value. The change in mark-to-market of the value of the derivative is recorded as an adjustment to income or other comprehensive loss depending on whether it has been designated and qualifies as an accounting hedge.

Derivative contracts are not entered into for trading or speculative purposes. Furthermore, the Company has a policy of only entering into contracts with major financial institutions based upon their credit rating and other factors. Under certain circumstances, the Company may be required to replace a counterparty in the event that the counterparty does not maintain a specified credit rating.

The following table summarizes the Company's swap instruments at September 30, 2009 (dollars in thousands):

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Current notional balance	\$	351,840
Highest possible notional	\$	351,840
Lowest interest rate		3.24%
Highest interest rate		4.47%
Average fixed rate		3.74%
Earliest maturity date		2011
Latest maturity date		2014
Weighted average original maturity		4.7 years
Estimated liability fair value (included in other liabilities at September 30, 2009)	\$	(19,564)
Estimated asset fair value (included in other assets, net at September 30, 2009)	\$	—

The following table summarizes the Company's cap instruments at September 30, 2009 (dollars in thousands):

Current notional balance	\$	734,621
Highest possible notional	\$	734,621
Lowest interest rate		4.96%
Highest interest rate		6.50%
Average fixed rate		5.97%
Earliest maturity date		2011
Latest maturity date		2012
Weighted average original maturity		3.8 years
Estimated liability fair value (included in other liabilities at September 30, 2009)	\$	—
Estimated asset fair value (included in other assets, net at September 30, 2009)	\$	942

During the three and nine months ended September 30, 2009, the fair value of the Company's interest rate swaps and caps decreased \$2.5 million and increased \$1.1 million, respectively. During the three and nine months ended September 30, 2008, the fair value of the Company's interest rate swaps and caps decreased \$8.5 million and \$17.3 million, respectively. This is included as a component of interest expense in the condensed consolidated statements of operations.

## 9. Litigation

The Company has been and is currently involved in litigation and claims incidental to the conduct of its business which are comparable to other companies in the senior living industry. Certain claims and lawsuits allege large damage amounts and may require significant costs to defend and resolve. Similarly, the senior living industry is continuously subject to scrutiny by governmental regulators, which could result in litigation related to regulatory compliance matters. As a result, the Company maintains insurance policies in amounts and with coverage and deductibles the Company believes are adequate, based on the nature and risks of its business, historical experience and industry standards. Effective January 1, 2009, the Company's current policies provide for deductibles of \$250,000 for each claim. Accordingly, the Company is, in effect, self-insured for most claims.

# 10. Supplemental Disclosure of Cash Flow Information

(dollars in thousands):

	Nine Months Ended September 30,	
	2009	2008
<b>Supplemental Disclosure of Cash Flow Information:</b>		
Interest paid	\$ 99,460	\$ 110,998
Income taxes paid	\$ 1,846	\$ 1,401
<b>Supplemental Schedule of Non-cash Operating, Investing and Financing Activities:</b>		
<b>Capital leases:</b>		
Property, plant and equipment and leasehold intangibles, net	\$ 18,236	\$ 35,942
Long-term debt	(18,236)	(35,942)
Net	\$ —	\$ —
<b>Lease Incentive:</b>		
Property, plant and equipment and leasehold intangibles, net	\$ 1,237	\$ —
Deferred liabilities	(1,237)	—
Net	\$ —	\$ —
<b>De-consolidation of an entity pursuant to FIN 46(R):</b>		
Accounts receivable	\$ —	\$ 92
Prepaid expenses and other current assets	—	1,861
Property, plant and equipment and leasehold intangibles, net	—	35,268
Other assets, net	—	7
Investment in unconsolidated ventures	—	186
Long-term debt	—	(29,159)
Accrued expenses	—	(1,252)
Trade accounts payable	—	(20)
Tenant security deposits	—	(173)
Refundable entrance fees and deferred revenue	—	(89)
Additional paid-in-capital	—	(9,217)
Accumulated deficit	—	2,496
Net	\$ —	\$ —
<b>Acquisition of assets, net of related payables and cash received:</b>		
Other intangible assets, net	\$ 1,227	\$ 5,105
Reclassification of other intangibles, net	\$ 141	\$ —

## 11. Facility Operating Leases

A summary of facility lease expense and the impact of straight-line adjustment and amortization of deferred gains are as follows (dollars in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Cash basis payment	\$ 65,331	\$ 63,394	\$ 195,397	\$ 189,610
Straight-line expense	3,793	4,709	12,073	15,675
Amortization of deferred gain	(1,088)	(1,086)	(3,259)	(3,257)
Facility lease expense	\$ 68,036	\$ 67,017	\$ 204,211	\$ 202,028

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## 12. Other Comprehensive Loss, Net

The following table presents the after-tax components of the Company's other comprehensive loss for the periods presented (dollars in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Net loss	\$ (21,290)	\$ (35,877)	\$ (45,456)	\$ (94,455)
Reclassification of net loss (gains) on derivatives out of (into) earnings	123	124	369	(492)
Amortization of payments from settlement of forward interest rate swaps	94	94	282	282
Other	(84)	85	(253)	422
Total comprehensive loss	\$ (21,157)	\$ (35,574)	\$ (45,058)	\$ (94,243)

## 13. Income Taxes

The Company's effective tax rates for the three months ended September 30, 2009 and 2008 are 25.6% and 38.4%, respectively, and for the nine months ended September 30, 2009 and 2008 are 29.4 % and 36.8%, respectively. The difference in the effective rate between these periods is primarily due to the decrease in the calculated annualized effective rate for 2009 based on projected improvements in the Company's performance. The rate was also impacted by the Company's stock based compensation deduction as calculated under the FASB guidance on Share-Based Payment for 2009 due to the movements in the stock price between September 30, 2008 and September 30, 2009.

The Company recorded additional interest charges related to its tax contingency reserve and a new uncertain tax position for the nine months ended September 30, 2009. During the three months ended September 30, 2009, the Company settled an uncertain tax position as a result of a state audit. Tax returns for years 2005 through 2007 are subject to future examination by tax authorities. In addition, tax returns are open from 1999 through 2004 to the extent of the net operating losses generated during those periods.

## 14. Share Repurchase Program

On March 19, 2008, the Company's board of directors approved a share repurchase program that authorized the Company to purchase up to \$150.0 million in the aggregate of the Company's common stock. Purchases could be made from time to time using a variety of methods, which could include open market purchases, privately negotiated transactions or block trades, or by any combination of such methods, in accordance with applicable insider trading and other securities laws and regulations. The size, scope and timing of any purchases was to be based on business, market and other conditions and factors, including price, regulatory and contractual requirements or consents, and capital availability. The repurchase program did not obligate the Company to acquire any particular amount of common stock and the program could be suspended, modified or discontinued at any time at the Company's discretion without prior notice. Shares of stock repurchased under the program were to be held as treasury shares.

On February 25, 2009, the Company's board of directors terminated this share repurchase authorization. In addition, the Company's amended credit facility effectively prohibits the Company from repurchasing shares of its common stock, paying dividends or making distributions.

## 15. Stockholders' Equity

On June 8, 2009, the Company completed a public equity offering of 16,046,512 shares of common stock. The offering yielded net proceeds of approximately \$163.7 million which was used primarily to repay the \$125.0 million of indebtedness which was outstanding under the Company's amended credit facility.

## 16. Fair Value Measurements

The following table provides the Company's derivative assets and liabilities carried at fair value as measured on a recurring basis as of September 30, 2009 (dollars in thousands):

	Total Carrying Value at September 30, 2009	Quoted prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Derivative assets	\$ 942	\$ —	\$ 942	\$ —
Derivative liabilities	(19,564)	—	(19,564)	—
	\$ (18,622)	\$ —	\$ (18,622)	\$ —

The Company's derivative assets and liabilities include interest rate swaps and caps that effectively convert a portion of the Company's variable rate debt to fixed rate debt. The derivative positions are valued using models developed internally by the respective counterparty that use as their basis readily observable market parameters (such as forward yield curves) and are classified within Level 2 of the valuation hierarchy.

The Company considers its own credit risk as well as the credit risk of its counterparties when evaluating the fair value of its derivatives. Any adjustments resulting from credit risk are recorded as a change in fair value of derivatives and amortization in the current period statement of operations.

## 17. Segment Results

The Company currently has four reportable segments: retirement centers; assisted living; CCRCs; and management services. These segments were determined based on the way that the Company's chief operating decision makers organize the Company's business activities for making operating decisions and assessing performance.

During the fourth quarter of 2008, five communities moved between segments to more accurately reflect their current underlying product offering. The movement did not change the Company's reportable segments, but it did impact the revenues and cost reported within each segment. The net impact of the change was a decrease of one community to the CCRCs segment.

**Retirement Centers.** Retirement center communities are primarily designed for middle to upper income senior citizens age 70 and older who desire an upscale residential environment providing the highest quality of service. The majority of the Company's retirement center communities consist of both independent living and assisted living units in a single community, which allows residents to "age-in-place" by providing them with a continuum of senior independent and assisted living services.

**Assisted Living.** Assisted living communities offer housing and 24-hour assistance with activities of daily life to mid-acuity frail and elderly residents. The Company's assisted living communities include both freestanding, multi-story communities and freestanding single story communities. The Company also operates memory care communities, which are freestanding assisted living communities specially designed for residents with Alzheimer's disease and other dementias.

**CCRCs.** CCRCs are large communities that offer a variety of living arrangements and services to accommodate all levels of physical ability and health. Most of the Company's CCRCs have retirement centers, assisted living and skilled nursing available on one campus, and some also include memory care and Alzheimer's units.

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**Management Services.** The Company's management services segment includes communities owned by others and operated by the Company pursuant to management agreements. Under the management agreements for these communities, the Company receives management fees as well as reimbursed expenses, which represent the reimbursement of certain expenses it incurs on behalf of the owners.

The accounting policies of reportable segments are the same as those described in the summary of significant accounting policies.

The following table sets forth certain segment financial and operating data (dollars in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
<b>Revenue<sup>(1)</sup></b>				
Retirement Centers	\$ 135,664	\$ 137,057	\$ 405,507	\$ 407,830
Assisted Living	217,843	211,888	653,052	631,682
CCRCs	150,349	131,805	440,985	396,010
Management Services	1,987	1,527	5,002	5,604
	<u>\$ 505,843</u>	<u>\$ 482,277</u>	<u>\$ 1,504,546</u>	<u>\$ 1,441,126</u>
<b>Segment operating income<sup>(2)</sup></b>				
Retirement Centers	\$ 58,700	\$ 55,748	\$ 173,948	\$ 172,423
Assisted Living	73,655	65,900	231,713	214,826
CCRCs	42,562	32,888	130,246	110,474
Management Services	1,391	1,069	3,501	3,923
	<u>\$ 176,308</u>	<u>\$ 155,605</u>	<u>\$ 539,408</u>	<u>\$ 501,646</u>
<b>General and administrative (including non-cash stock-based compensation expense)<sup>(3)</sup></b>				
	\$ 34,124	\$ 32,490	\$ 98,647	\$ 107,932
Facility lease expense	68,036	67,017	204,211	202,028
Depreciation and amortization	66,983	67,066	202,378	207,882
Income (loss) from operations	<u>\$ 7,165</u>	<u>\$ (10,968)</u>	<u>\$ 34,172</u>	<u>\$ (16,216)</u>

	As of	
	September 30, 2009	December 31, 2008
<b>Total assets</b>		
Retirement Centers	\$ 1,193,576	\$ 1,233,268
Assisted Living	1,273,855	1,393,223
CCRCs	1,666,573	1,476,206
Corporate and Management Services	367,678	346,361
	<u>\$ 4,501,682</u>	<u>\$ 4,449,258</u>

(1) All revenue is earned from external third parties in the United States.

(2) Segment operating income is defined as segment revenues less segment operating expenses (excluding depreciation and amortization). Included in segment operating income is hurricane and named tropical storms expense of \$3.6 million for the three and nine months ended September 30, 2008 consisting of \$1.1 million in Retirement Centers, \$1.3 million in Assisted Living and \$1.2 million in CCRCs.

(3) Net of general and administrative costs allocated to management services reporting segment.

## 18. Subsequent Events

On October 7, 2009, the Company entered into an agreement with another senior housing company to acquire 21 senior living communities for an aggregate purchase price of \$204.0 million. The portfolio has a total of 1,389 units, comprised of 92 independent living units, 876 assisted living units and 421 Alzheimer's units. The Company

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expects to finance the transaction with approximately \$134.0 million of mortgage debt (substantially through the assumption of existing debt), with the balance of the purchase price to be paid from cash on hand. The consummation of the transaction is subject to the satisfaction of certain closing conditions and contingencies and the receipt of certain lender approvals. The transaction is expected to close in November 2009.

The Company has evaluated all events subsequent to September 30, 2009 through the time of filing on November 4, 2009 and determined that no events other than those noted above have occurred which would require additional disclosure.

**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

**SAFE HARBOR STATEMENT UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995**

Certain statements in this Quarterly Report on Form 10-Q and other information we provide from time to time may constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Those forward-looking statements include all statements that are not historical statements of fact and those regarding our intent, belief or expectations, including, but not limited to, statements regarding the consummation of the Sunrise portfolio acquisition and the related financing and our expectations regarding the future performance of the acquired communities and their effect on our financial results; statements relating to our operational initiatives and our expectations regarding their effect on our results; our expectations regarding occupancy, revenue, expense levels, the demand for senior housing, expansion activity, acquisition opportunities and asset dispositions; our belief regarding our growth prospects; our ability to secure financing or repay, replace or extend existing debt at or prior to maturity; our ability to remain in compliance with all of our debt and lease agreements (including the financial covenants contained therein); our expectations regarding liquidity; our plans to deleverage; our expectations regarding financings and refinancings of assets; our plans to generate growth organically through occupancy improvements, increases in annual rental rates and the achievement of operating efficiencies and cost savings; our plans to expand our offering of ancillary services (therapy and home health); our plans to expand existing communities; the expected project costs for our expansion program; our expected levels of expenditures and reimbursements (and the timing thereof); our expectations for the performance of our entrance fee communities; our ability to anticipate, manage and address industry trends and their effect on our business; our expectations regarding the payment of dividends; and our ability to increase revenues, earnings, Adjusted EBITDA, Cash From Facility Operations, and/or Facility Operating Income (as such terms are defined herein). Words such as "anticipate(s)", "expect(s)", "intend(s)", "plan(s)", "target(s)", "project(s)", "predict(s)", "believe(s)", "may", "will", "would", "could", "should", "seek(s)", "estimate(s)" and similar expressions are intended to identify such forward-looking statements. These statements are based on management's current expectations and beliefs and are subject to a number of risks and uncertainties that could lead to actual results differing materially from those projected, forecasted or expected. Although we believe that the assumptions underlying the forward-looking statements are reasonable, we can give no assurance that our expectations will be attained. Factors which could have a material adverse effect on our operations and future prospects or which could cause actual results to differ materially from our expectations include, but are not limited to, our ability to satisfy the closing conditions and successfully complete the Sunrise portfolio acquisition; our ability to assume and obtain the mortgage debt financing for the Sunrise portfolio acquisition; the risk associated with the current global economic crisis and its impact upon capital markets and liquidity; our inability to extend (or refinance) debt as it matures or replace our amended credit facility when it matures; the risk that we may not be able to satisfy the conditions precedent to exercising the extension options associated with certain of our debt agreements; events which adversely affect the ability of seniors to afford our monthly resident fees or entrance fees; the conditions of housing markets in certain geographic areas; our ability to generate sufficient cash flow to cover required interest and long-term operating lease payments; the effect of our indebtedness and long-term operating leases on our liquidity; the risk of loss of property pursuant to our mortgage debt and long-term lease obligations; the possibilities that changes in the capital markets, including changes in interest rates and/or credit spreads, or other factors could make financing more expensive or unavailable to us; the risk that we may be required to post additional cash collateral in connection with our interest rate swaps; the risk that continued market deterioration could jeopardize the performance of certain of our counterparties' obligations; changes in governmental reimbursement programs; our limited operating history on a combined basis; our ability to effectively manage our growth; our ability to maintain consistent quality control; delays in obtaining regulatory approvals; our ability to integrate acquisitions into our operations; competition for the acquisition of assets; our ability to obtain additional capital on terms acceptable to us; a decrease in the overall demand for senior housing; our vulnerability to economic downturns; acts of nature in certain geographic areas; terminations of our resident agreements and vacancies in the living spaces we lease; increased competition for skilled personnel; increased union activity; departure of our key officers; increases in market interest rates; environmental contamination at any of our facilities; failure to comply with existing environmental laws; an adverse determination or resolution of complaints filed against us; the cost and difficulty of complying with increasing and evolving regulation; and other risks detailed from time to time in our filings with the Securities and Exchange Commission, press releases and other communications, including those set forth under "Risk Factors" included in our Annual Report on Form 10-K for the year ended December 31, 2008 and in this Quarterly Report. Such forward-looking statements speak only as of the date of this Quarterly Report. We expressly disclaim any obligation to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in our expectations with regard thereto or change in events, conditions or circumstances on which any statement is based.



Executive Overview

During the third quarter of 2009, we continued to make progress in implementing the long-term growth objectives outlined in our most recent Annual Report on Form 10-K, in spite of the difficult operating environment. The following is a summary discussion of our progress during the three and nine months ended September 30, 2009.

Our primary long-term growth objectives are to grow our revenues, Adjusted EBITDA, Cash From Facility Operations and Facility Operating Income primarily through a combination of: (i) organic growth in our core business, including expense control and the realization of economies of scale; (ii) continued expansion of our ancillary services programs (including therapy and home health services); and (iii) expansion of our existing communities. Additionally, as opportunities arise, we may also grow through the selective acquisition and consolidation of additional communities, asset portfolios, home health agencies and other senior living companies, as well as through the acquisition of the fee interest in communities that we currently lease or manage.

Our operating results for the three and nine months ended September 30, 2009 were favorably impacted by an increase in our total revenues (primarily driven by an increase in average monthly revenue per unit/bed including an increase in our ancillary services revenue) and by the significant cost control measures that were implemented in recent periods. The difficult operating environment during the first nine months of 2009 has resulted in slightly lower occupancy and diminished growth in the rates we charge our residents. We responded by controlling our expenses and capital spending, and by increasing the reach of our ancillary services programs. We also continue to aggressively focus on maintaining and increasing occupancy.

During the first half of the year, we took steps to preserve our liquidity and increase our financial flexibility. For example, during the second quarter, we completed a public equity offering which yielded \$163.7 million of net proceeds, which were primarily used to repay the \$125.0 million of indebtedness which was outstanding under our credit facility. Furthermore, we extended the maturity of a number of mortgage loans and, factoring in contractual extension options, have no mortgage debt maturities until 2011 (other than periodic, scheduled principal payments). Finally, we took steps to reduce materially our exposure to collateralization requirements associated with interest rate swaps. As a result of these steps and our operating performance during the nine months ended September 30, 2009, we ended the third quarter with \$159.3 million of unrestricted cash and cash equivalents on our condensed consolidated balance sheet.

We recently entered into an agreement to acquire 21 senior living communities from affiliates of Sunrise Senior Living, Inc. for an aggregate purchase price of \$204.0 million plus customary transaction expenses. The portfolio has a total of 1,389 units, comprised of 92 independent living units, 876 assisted living units and 421 Alzheimer's units. We expect to finance the transaction with approximately \$134.0 million of mortgage debt (substantially through the assumption of existing debt), with the balance of the purchase price to be paid from cash on hand. The consummation of the transaction is subject to the satisfaction of certain closing conditions and contingencies and the receipt of certain lender approvals. The transaction is expected to close in November 2009.

The tables below present a summary of our operating results and certain other financial metrics for the three and nine months ended September 30, 2009 and 2008 and the amount and percentage of increase or decrease of each applicable item (dollars in millions).

	Three Months Ended September 30,		Increase (Decrease)	
	2009	2008 <sup>(1)</sup>	Amount	Percent
Total revenues	\$ 505.8	\$ 482.3	\$ 23.5	4.9%
Net loss	\$ (21.3)	\$ (35.9)	\$ 14.6	40.7%
Adjusted EBITDA	\$ 85.6	\$ 67.4	\$ 18.2	27.0%
Cash From Facility Operations	\$ 48.2	\$ 22.5	\$ 25.7	114.2%
Facility Operating Income	\$ 169.2	\$ 149.8	\$ 19.4	13.0%

	Nine Months Ended September 30,		Increase (Decrease)	
	2009	2008 <sup>(1)</sup>	Amount	Percent
Total revenues	\$ 1,504.5	\$ 1,441.1	\$ 63.4	4.4%
Net loss	\$ (45.5)	\$ (94.5)	\$ 49.0	51.9%
Adjusted EBITDA	\$ 263.6	\$ 227.0	\$ 36.6	16.1%
Cash From Facility Operations	\$ 150.9	\$ 97.7	\$ 53.2	54.5%
Facility Operating Income	\$ 519.8	\$ 481.2	\$ 38.6	8.0%

- (1) The calculation of Adjusted EBITDA and Cash From Facility Operations for the three and nine months ended September 30, 2008 includes hurricane and named tropical storms expense totaling \$3.6 million.

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Adjusted EBITDA and Facility Operating Income are non-GAAP financial measures we use in evaluating our operating performance. Cash From Facility Operations is a non-GAAP financial measure we use in evaluating our liquidity. See "Non-GAAP Financial Measures" below for an explanation of how we define each of these measures, a detailed description of why we believe such measures are useful and the limitations of each measure, a reconciliation of net loss to each of Adjusted EBITDA and Facility Operating Income and a reconciliation of net cash provided by operating activities to Cash From Facility Operations.

Our revenues for the three months ended September 30, 2009 increased to \$505.8 million, an increase of \$23.5 million, or approximately 4.9%, over our revenues for the three months ended September 30, 2008. For the nine months ended September 30, 2009, our revenues increased \$63.4 million, or approximately 4.4%, to \$1,504.5 million over the nine months ended September 30, 2008. The increase in revenues in the current year period was primarily a result of an increase in the average revenue per unit/bed compared to the prior year period, including growing revenues from our ancillary services programs, partially offset by a decline in occupancy from the prior year period. Our weighted average occupancy rate for the third quarter of 2009 was 89.0%, compared to 89.7% for the third quarter of 2008.

During the three months ended September 30, 2009, our Adjusted EBITDA, Cash From Facility Operations and Facility Operating Income increased by 27.0%, 114.2% and 13.0%, respectively, when compared to the three months ended September 30, 2008. During the nine months ended September 30, 2009, our Adjusted EBITDA, Cash From Facility Operations, and Facility Operating Income increased by 16.1%, 54.5% and 8.0%, respectively, when compared to the nine months ended September 30, 2008.

During the three months ended September 30, 2009, we continued to expand our ancillary services offerings. As of September 30, 2009, we offered therapy services to approximately 35,000 of our units and home health services to approximately 18,800 of our units. We continue to see positive results from the maturation of previously-opened therapy and home health clinics. We also expect to continue to expand our ancillary services programs to additional units and to open or acquire additional home health agencies.

During the third quarter of 2009, we opened two expansions with a total of 156 units. Our expansion program currently has two projects under construction that will add an additional 205 units, which are expected to open in the fourth quarter. Additionally, we recently opened the 240-unit independent living component of our new entry fee CCRC in the Villages, Florida. The 72-bed skilled nursing unit will open in the fourth quarter.

We believe that the deteriorating housing market, credit crisis and general economic uncertainty have caused some potential customers (or their adult children) to delay or reconsider moving into our communities, resulting in a decrease in occupancy rates and occupancy levels when compared to the prior year period. We remain cautious about the economy and the adverse credit and financial markets and their effect on our customers and our business. In addition, we continue to experience volatility in the entrance fee portion of our business. The timing of entrance fee sales is subject to a number of different factors (including the ability of potential customers to sell their existing homes) and is also inherently subject to variability (positively or negatively) when measured over the short-term. These factors also impact our potential independent living customers to a significant extent. We expect occupancy and entrance fee sales to normalize over the longer term.

### **Consolidated Results of Operations**

#### ***Three Months Ended September 30, 2009 and 2008***

The following table sets forth, for the periods indicated, statements of operations items and the amount and percentage of increase or decrease of these items. The results of operations for any particular period are not necessarily indicative of results for any future period. The following data should be read in conjunction with our condensed consolidated financial statements and the notes thereto, which are included herein.

(dollars in thousands, except average monthly revenue per unit/bed)

	Three Months Ended September 30,			
	2009	2008	Increase (Decrease)	% Increase (Decrease)
<b>Statement of Operations Data:</b>				
<b>Revenue</b>				
<b>Resident fees</b>				
Retirement Centers	\$ 135,664	\$ 137,057	\$ (1,393)	(1.0%)
Assisted Living	217,843	211,888	5,955	2.8%
CCRCs	150,349	131,805	18,544	14.1%
Total resident fees	503,856	480,750	23,106	4.8%
Management fees	1,987	1,527	460	30.1%
Total revenue	505,843	482,277	23,566	4.9%
<b>Expense</b>				
<b>Facility operating expense<sup>(1)</sup></b>				
Retirement Centers	76,964	81,309	(4,345)	(5.3%)
Assisted Living	144,188	145,988	(1,800)	(1.2%)
CCRCs	107,787	98,917	8,870	9.0%
Total facility operating expense	328,939	326,214	2,725	0.8%
General and administrative expense	34,720	32,948	1,772	5.4%
Facility lease expense	68,036	67,017	1,019	1.5%
Depreciation and amortization	66,983	67,066	(83)	(0.1%)
Total operating expense	498,678	493,245	5,433	1.1%
Income (loss) from operations	7,165	(10,968)	18,133	165.3%
Interest income	623	1,383	(760)	(55.0%)
<b>Interest expense</b>				
Debt	(30,574)	(37,599)	7,025	18.7%
Amortization of deferred financing costs	(2,167)	(3,004)	837	27.9%
Change in fair value of derivatives and amortization	(2,478)	(8,454)	5,976	70.7%
Equity in earnings (loss) of unconsolidated ventures	42	358	(316)	(88.3%)
Loss on extinguishment of debt	(1,178)	—	(1,178)	(100.0%)
Other non-operating (expense) income	(52)	69	(121)	(175.4%)
Loss before income taxes	(28,619)	(58,215)	29,596	50.8%
Benefit for income taxes	7,329	22,338	(15,009)	(67.2%)
Net loss	\$ (21,290)	\$ (35,877)	\$ 14,587	40.7%
<b>Selected Operating and Other Data:</b>				
Total number of communities (at end of period)	547	550	(3)	(0.5%)
Total units/beds operated <sup>(2)</sup>	52,268	51,933	335	0.6%
Owned/leased communities units/beds	47,836	47,640	196	0.4%

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Owned/leased communities occupancy rate (weighted average) <sup>(3)</sup>	89.0%	89.7%	(0.7%)	(0.8%)
Average monthly revenue per unit/bed <sup>(4)</sup>	\$ 3,987	\$ 3,786	\$ 201	5.3%

*Selected Segment Operating and Other Data:*

**Retirement Centers**

Number of communities (period end)	85	87	(2)	(2.3%)
Total units/beds <sup>(2)</sup>	15,255	15,710	(455)	(2.9%)
Occupancy rate (weighted average)	89.1%	90.6%	(1.5%)	(1.7%)
Average monthly revenue per unit/bed <sup>(4)</sup>	\$ 3,347	\$ 3,232	\$ 115	3.6%

**Assisted Living**

Number of communities (period end)	405	410	(5)	(1.2%)
Total units/beds <sup>(2)</sup>	20,804	21,059	(255)	(1.2%)
Occupancy rate (weighted average)	90.7%	90.2%	0.5%	0.6%
Average monthly revenue per unit/bed <sup>(4)</sup>	\$ 3,850	\$ 3,723	\$ 127	3.4%

**CCRCs**

Number of communities (period end)	35	32	3	9.4%
Total units/beds <sup>(2)</sup>	11,777	10,871	906	8.3%
Occupancy rate (weighted average) <sup>(3)</sup>	85.7%	87.4%	(1.7%)	(1.9%)
Average monthly revenue per unit/bed <sup>(4)</sup>	\$ 5,200	\$ 4,810	\$ 390	8.1%

**Management Services**

Number of communities (period end)	22	21	1	4.8%
Total units/beds <sup>(2)</sup>	4,432	4,293	139	3.2%
Occupancy rate (weighted average)	83.9%	85.3%	(1.4%)	(1.6%)

*Selected Entrance Fee Data:*

Non-refundable entrance fees sales	\$ 12,635	\$ 7,253
Refundable entrance fees sales <sup>(5)</sup>	9,296	4,273
Total entrance fee receipts <sup>(6)</sup>	21,931	11,526
Refunds	(4,649)	(5,856)
Net entrance fees	\$ 17,282	\$ 5,670

- (1) Segment facility operating expense for the three months ended September 30, 2008 includes hurricane and named tropical storms expense totaling \$3.6 million consisting of \$1.1 million for Retirement Centers, \$1.3 million for Assisted Living and \$1.2 million for CCRCs.
- (2) Total units/beds operated represent the total units/beds operated as of the end of the period.
- (3) Excluding the impact of current quarter expansion openings, for the three months ended September 30, 2009, owned/leased communities occupancy rate was 89.2% and CCRCs occupancy rate was 86.4%.
- (4) Average monthly revenue per unit/bed represents the average of the total monthly revenues, excluding amortization of entrance fees, divided by average occupied units/beds.
- (5) Refundable entrance fee sales for the three months ended September 30, 2009 and 2008 include amounts received from residents participating in the MyChoice program, which allows new and existing residents the option to pay additional refundable entrance fee amounts in return for a reduced monthly service fee. MyChoice amounts received from residents totaled \$0.1 million and \$0.6 million for the three months ended September 30, 2009 and 2008, respectively.
- (6) Includes \$10.6 million of first generation entrance fee receipts which represent initial entrance fees received from the sale of units at a newly opened entrance fee CCRC.

As of September 30, 2009, our total operations included 547 communities with a capacity to serve 52,268 residents. Our resident capacity increased by 424 units from June 30, 2009 as a result of the completion of a number of community expansion projects and the addition of one new management agreement.

#### ***Resident Fees***

The increase in resident fees occurred primarily in the Assisted Living and CCRC segments. Resident fees increased over the prior-year third quarter mainly due to an increase in average monthly revenue per unit/bed during the current period including an increase in our ancillary services revenue as we continue to roll out therapy and home health services to many of our communities. This increase was partially offset by a decrease in occupancy for our communities in the Retirement Centers and CCRCs segments. During the current period, revenues grew 4.5% at the 517 communities we operated during both periods with a 5.1% increase in the average monthly revenue per unit/bed and a 0.5% decrease in occupancy.

Retirement Centers revenue declined slightly, primarily due to a decrease in occupancy at the communities we operated during both periods, partially offset by an increase in the average monthly revenue per unit/bed at those same communities period over period.

Assisted Living revenue increased \$6.0 million, or 2.8%, due to an increase in the average monthly revenue per unit/bed and an increase in occupancy at the communities we operated during both periods.

CCRCs revenue increased \$18.5 million, or 14.1%, primarily due to an increase in the average monthly revenue per unit/bed at the communities we operated during both periods partially offset by a decrease in occupancy at these same communities period over period. Revenue growth was also positively impacted by an increase in revenue related to the rollout of our ancillary services business to these communities during 2008 and 2009.

#### ***Management Fees***

Management fees increased \$0.5 million, or 30.1%, primarily due to a reclassification between management fees and facility operating expense.

#### ***Facility Operating Expense***

Facility operating expense increased over the prior-year period primarily due to an increase in salaries and wages, increased insurance expense, higher deferred community fee expense recognition, and additional current year expense incurred in connection with the continued expansion of our ancillary services programs during 2009. These increases were partially offset by significant cost control measures that were implemented in recent periods. Facility operating expense during the third quarter of 2008 was negatively impacted by hurricane and named tropical storms expense.

Retirement Centers operating expenses decreased \$4.3 million, or 5.3%, period over period, primarily due to expenses incurred related to hurricane and named tropical storms during the third quarter of 2008, as well as decreases in public relations and advertising expenses, partially offset by additional expense incurred in connection with the continued expansion of our ancillary services programs.

Assisted Living operating expenses decreased \$1.8 million, or 1.2%, primarily due to significant cost control measures implemented in recent periods, including reductions in overtime hours worked and reduced public relations and advertising expenses. These decreases were partially offset by additional expense incurred in connection with the continued expansion of our ancillary services programs. Facility operating expense during the third quarter of 2008 was negatively impacted by hurricane and named tropical storms expense.

CCRCs operating expenses increased \$8.9 million, or 9.0%, primarily due to an increase in expense incurred in connection with the continued expansion of our ancillary services programs, as well as increased salaries and wages due to filling vacant positions and wage rate increases. These increases were partially offset by significant cost control measures that were implemented in recent periods. Facility operating expense during the third quarter of 2008 was negatively impacted by hurricane and named tropical storms expense.

**General and Administrative Expense**

General and administrative expense increased \$1.8 million, or 5.4%, primarily as a result of increases in bonus expense and non-cash stock-based compensation expense in the current period in connection with restricted stock grants, partially offset by decreases in employee benefits expenses and travel and entertainment expenses. General and administrative expense as a percentage of total revenue, including revenue generated by the communities we manage and excluding non-cash compensation, integration and acquisition-related costs, was 4.5% and 4.3% for the three months ended September 30, 2009 and 2008, respectively, calculated as follows (dollars in thousands):

	Three Months Ended September 30,			
	2009		2008	
Resident fee revenues	\$	503,856	92.8%	\$ 480,750 92.9%
Resident fee revenues under management		39,021	7.2%	36,739 7.1%
Total	\$	542,877	100.0%	\$ 517,489 100.0%
General and administrative expenses (excluding non-cash compensation, integration and acquisition-related costs)	\$	24,651	4.5%	\$ 22,311 4.3%
Non-cash compensation expense		7,869	1.4%	6,737 1.3%
Integration and acquisition-related costs		2,200	0.4%	3,900 0.8%
General and administrative expenses (including non-cash compensation, integration and acquisition-related costs)	\$	34,720	6.4%	\$ 32,948 6.4%

**Facility Lease Expense**

Lease expense remained relatively constant period over period.

**Depreciation and Amortization**

Depreciation and amortization expense remained relatively constant period over period.

**Interest Income**

Interest income decreased \$0.8 million, or 55.0%, primarily due to the recognition of interest income in the third quarter of 2008 upon collection of a long-term note receivable, which interest income had been deferred as the interest was accumulating unpaid.

**Interest Expense**

Interest expense decreased \$13.8 million, or 28.2%, primarily due to the change in fair value of our interest rate swaps and caps. During the three months ended September 30, 2009, we recognized approximately \$2.5 million of interest expense on our interest rate swaps and caps due to unfavorable changes in the LIBOR yield curve which resulted in a change in the fair value of the swaps and caps, as compared to approximately \$8.5 million of interest expense on our interest rate swaps for the three months ended September 30, 2008, representing a \$6.0 million decrease in interest expense period over period. Additionally, interest expense on our mortgage debt decreased due to a decline in market interest rates period over period.

**Income Taxes**

Our effective tax rates for the three months ended September 30, 2009 and 2008 are 25.6% and 38.4%, respectively. The difference in the effective rate between these periods is primarily due to the decrease in the calculated annualized effective rate for 2009 based on projected improvements in our performance.

An additional interest charge related to our tax contingency reserve was recorded during the three months ended September 30, 2009. Additionally, we settled an uncertain tax position as a result of a state audit during the three months ended September 30, 2009. Tax returns for years 2005 through 2007 are subject to future examination by tax authorities. In addition, tax returns are open from 1999 through 2004 to the extent of the net operating losses generated during those periods.

**Nine Months Ended September 30, 2009 and 2008**

The following table sets forth, for the periods indicated, statements of operations items and the amount and percentage of increase or decrease of these items. The results of operations for any particular period are not necessarily indicative of results for any future period. The following data should be read in conjunction with our condensed consolidated financial statements and the notes thereto, which are included herein.

(dollars in thousands, except average monthly revenue per unit/bed)

	Nine Months Ended September 30,			
	2009	2008	Increase (Decrease)	% Increase (Decrease)
<b>Statement of Operations Data:</b>				
<b>Revenue</b>				
<b>Resident fees</b>				
Retirement Centers	\$ 405,507	\$ 407,830	\$ (2,323)	(0.6%)
Assisted Living	653,052	631,682	21,370	3.4%
CCRCs	440,985	396,010	44,975	11.4%
Total resident fees	1,499,544	1,435,522	64,022	4.5%
Management fees	5,002	5,604	(602)	(10.7%)
Total revenue	1,504,546	1,441,126	63,420	4.4%
<b>Expense</b>				
<b>Facility operating expense<sup>(1)</sup></b>				
Retirement Centers	231,559	235,407	(3,848)	(1.6%)
Assisted Living	421,339	416,856	4,483	1.1%
CCRCs	310,739	285,536	25,203	8.8%
Total facility operating expense	963,637	937,799	25,838	2.8%
General and administrative expense	100,148	109,633	(9,485)	(8.7%)
Facility lease expense	204,211	202,028	2,183	1.1%
Depreciation and amortization	202,378	207,882	(5,504)	(2.6%)
Total operating expense	1,470,374	1,457,342	13,032	0.9%
Income (loss) from operations	34,172	(16,216)	50,388	310.7%
Interest income	1,771	6,169	(4,398)	(71.3%)
<b>Interest expense</b>				
Debt	(96,845)	(110,894)	14,049	12.7%
Amortization of deferred financing costs	(7,099)	(6,940)	(159)	(2.3%)
Change in fair value of derivatives and amortization	1,137	(17,344)	18,481	106.6%
Equity in earnings (loss) of unconsolidated ventures	1,218	(750)	1,968	262.4%
Loss on extinguishment of debt	(2,918)	(3,052)	134	4.4%
Other non-operating income (expense)	4,172	(424)	4,596	1,084.0%

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Loss before income taxes	(64,392)	(149,451)	85,059	56.9%
Benefit for income taxes	18,936	54,996	(36,060)	(65.6%)
Net loss	<u>\$ (45,456)</u>	<u>\$ (94,455)</u>	<u>\$ 48,999</u>	<u>51.9%</u>

*Selected Operating and Other Data:*

Total number of communities (at end of period)	547	550	(3)	(0.5%)
Total units/beds operated <sup>(2)</sup>	52,268	51,933	335	0.6%
Owned/leased communities units/beds	47,836	47,640	196	0.4%
Owned/leased communities occupancy rate (weighted average) <sup>(3)</sup>	88.7%	89.5%	(0.8%)	(0.9%)
Average monthly revenue per unit/bed <sup>(4)</sup>	<u>\$ 3,979</u>	<u>\$ 3,778</u>	<u>\$ 201</u>	<u>5.3%</u>

*Selected Segment Operating and Other Data:*

<b>Retirement Centers</b>				
Number of communities (period end)	85	87	(2)	(2.3%)
Total units/beds <sup>(2)</sup>	15,255	15,710	(455)	(2.9%)
Occupancy rate (weighted average)	88.9%	90.2%	(1.3%)	(1.4%)
Average monthly revenue per unit/bed <sup>(4)</sup>	<u>\$ 3,344</u>	<u>\$ 3,216</u>	<u>\$ 128</u>	<u>4.0%</u>
<b>Assisted Living</b>				
Number of communities (period end)	405	410	(5)	(1.2%)
Total units/beds <sup>(2)</sup>	20,804	21,059	(255)	(1.2%)
Occupancy rate (weighted average)	90.0%	89.6%	0.4%	0.4%
Average monthly revenue per unit/bed <sup>(4)</sup>	<u>\$ 3,877</u>	<u>\$ 3,738</u>	<u>\$ 139</u>	<u>3.7%</u>
<b>CCRCs</b>				
Number of communities (period end)	35	32	3	9.4%
Total units/beds <sup>(2)</sup>	11,777	10,871	906	8.3%
Occupancy rate (weighted average) <sup>(3)</sup>	86.2%	88.3%	(2.1%)	(2.4%)
Average monthly revenue per unit/bed <sup>(4)</sup>	<u>\$ 5,115</u>	<u>\$ 4,759</u>	<u>\$ 356</u>	<u>7.5%</u>
<b>Management Services</b>				
Number of communities (period end)	22	21	1	4.8%
Total units/beds <sup>(2)</sup>	4,432	4,293	139	3.2%
Occupancy rate (weighted average)	84.9%	84.1%	0.8%	1.0%

*Selected Entrance Fee Data:*

Non-refundable entrance fees sales	<u>\$ 23,225</u>	<u>\$ 15,210</u>		
Refundable entrance fees sales <sup>(5)</sup>	<u>17,032</u>	<u>15,185</u>		
Total entrance fee receipts <sup>(6)</sup>	<u>40,257</u>	<u>30,395</u>		
Refunds	<u>(16,842)</u>	<u>(14,331)</u>		
Net entrance fees	<u>\$ 23,415</u>	<u>\$ 16,064</u>		

- (1) Segment facility operating expense for the nine months ended September 30, 2008 includes hurricane and named tropical storms expense totaling \$3.6 million consisting of \$1.1 million for Retirement Centers, \$1.3 million for Assisted Living and \$1.2 million for CCRCs.
- (2) Total units/beds operated represent the total units/beds operated as of the end of the period.
- (3) Excluding the impact of current quarter expansion openings, for the nine months ended September 30, 2009, owned/leased communities occupancy rate was 88.8% and CCRCs occupancy rate was 86.4%.
- (4) Average monthly revenue per unit/bed represents the average of the total monthly revenues, excluding amortization of entrance fees, divided by average occupied units/beds.
- (5) Refundable entrance fee sales for the nine months ended September 30, 2009 and 2008 include amounts received from residents participating in the MyChoice program, which allows new and existing residents the option to pay additional refundable entrance fee amounts in return for a reduced monthly service fee. MyChoice amounts received from residents totaled \$0.7 million and \$1.8 million for the nine months ended September 30, 2009 and 2008, respectively.



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- (6) Includes \$10.6 million of first generation entrance fee receipts which represent initial entrance fees received from the sale of units at a newly opened entrance fee CCRC.

As of September 30, 2009, our total operations included 547 communities with a capacity to serve 52,268 residents. Our resident capacity increased by 464 units from December 31, 2008 as a result of the completion of a number of community renovation and expansion projects and the addition of one new management agreement, partially offset by the sale of one community and the termination of a management agreement with another community.

### ***Resident Fees***

The increase in resident fees occurred in the Assisted Living and CCRC segments. Resident fees increased over the prior-year period mainly due to an increase in average monthly revenue per unit/bed during the current period including an increase in our ancillary services revenue as we continue to roll out therapy and home health services to many of our communities. This increase was partially offset by a decrease in occupancy for our communities in the Retirement Centers and CCRCs segments. During the current period, revenues grew 4.4% at the 516 properties we operated in both periods with a 5.2% increase in the average monthly revenue per unit/bed and a 0.7% decrease in occupancy.

Retirement Centers revenue decreased slightly, primarily due to a decrease in occupancy at the communities we operated during both periods, partially offset by an increase in the average monthly revenue per unit/bed at those same communities period over period.

Assisted Living revenue increased \$21.4 million, or 3.4%, primarily due to an increase in the average monthly revenue per unit/bed at the communities we operated during both periods, as well as a slight increase in occupancy at these same communities period over period.

CCRCs revenue increased \$45.0 million, or 11.4%, primarily due to an increase in the average monthly revenue per unit/bed at the communities we operated during both periods, partially offset by a decrease in occupancy at these same communities period over period. Revenue growth was also positively impacted by an increase in revenue related to the rollout of our ancillary services business to these communities during 2008 and 2009.

### ***Management Fees***

Management fees decreased \$0.6 million, or 10.7%, primarily due to a one-time fee paid by one of the managed communities during the second quarter of 2008.

### ***Facility Operating Expense***

Facility operating expense increased over the prior-year period primarily due to an increase in salaries and wages due to wage increases occurring during 2008, increases in insurance expense, as well as higher deferred community fee expense recognition. Also there was an increase in expense incurred in connection with the continued expansion of our ancillary services programs during 2009. These increases were partially offset by significant cost control measures that were implemented in recent periods. Facility operating expense during the nine months ended September 30, 2008 was negatively impacted by hurricane and named tropical storms expense.

Retirement Centers operating expenses decreased \$3.8 million, or 1.6%, primarily due to expenses incurred related to hurricane and named tropical storms during 2008, as well as decreases in public relations and advertising expenses, partially offset by additional expense incurred in connection with the continued expansion of our ancillary services programs.

Assisted Living operating expenses increased \$4.5 million, or 1.1%, primarily due to increased salaries and wages, higher deferred community fee expense recognition, and an increase in expense incurred in connection with the continued expansion of our ancillary services programs. These increases were partially offset by reduced overtime

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hours worked and decreased public relations and advertising expenses. Facility operating expense during the nine months ended September 30, 2008 was negatively impacted by hurricane and named tropical storms expense.

CCRCs operating expenses increased \$25.2 million, or 8.8%, primarily due to an increase in expense incurred in connection with the continued expansion of our ancillary services programs, as well as increased insurance expense and salaries and wages. These increases were partially offset by significant cost control measures that were implemented in recent periods. Facility operating expense during the nine months ended September 30, 2008 was negatively impacted by hurricane and named tropical storms expense.

### ***General and Administrative Expense***

General and administrative expense decreased \$9.5 million, or 8.7%, primarily as a result of a decrease in non-controllable expenses period over period related to an \$8.0 million reserve established for certain litigation during the nine months ended September 30, 2008, as well as decreases in non-cash stock-based compensation expense in connection with restricted stock grants, employee benefits expenses and travel and entertainment expenses. These decreases were partially offset by increased bonus expense in the current period. General and administrative expense as a percentage of total revenue, including revenue generated by the communities we manage and excluding non-cash compensation, integration, non-recurring and acquisition-related costs, was 4.7% and 4.5% for the nine months ended September 30, 2009 and 2008, respectively, calculated as follows (dollars in thousands):

	Nine Months Ended September 30,					
	2009		2008			
Resident fee revenues	\$	1,499,544	92.7%	\$	1,435,522	92.7%
Resident fee revenues under management		118,018	7.3%		112,539	7.3%
Total	\$	1,617,562	100.0%	\$	1,548,061	100.0%
General and administrative expenses (excluding non-cash compensation, integration, non-recurring and acquisition-related costs)	\$	75,900	4.7%	\$	69,038	4.5%
Non-cash compensation expense		21,549	1.3%		23,368	1.5%
Integration, non-recurring and acquisition-related costs		2,699	0.2%		17,227	1.1%
General and administrative expenses (including non-cash compensation, integration, non-recurring and acquisition-related costs)	\$	100,148	6.2%	\$	109,633	7.1%

### ***Facility Lease Expense***

Lease expense remained relatively constant period over period.

### ***Depreciation and Amortization***

Depreciation and amortization expense decreased by \$5.5 million, or 2.6%, primarily as a result of resident in-place lease intangibles becoming fully amortized during late 2008.

### ***Interest Income***

Interest income decreased \$4.4 million, or 71.3%, primarily due to the recognition of interest income upon collection of a long-term note receivable, which interest income had been deferred as the interest was accumulating unpaid, during the nine months ended September 30, 2008.

### ***Interest Expense***

Interest expense decreased \$32.4 million, or 23.9%, primarily due to the change in fair value of our interest rate swaps and caps. During the nine months ended September 30, 2009, we recognized approximately \$1.1 million of

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interest income on our interest rate swaps and caps due to favorable changes in the LIBOR yield curve which resulted in a change in the fair value of the swaps and caps, as compared to approximately \$17.3 million of interest expense on our interest rate swaps for the nine months ended September 30, 2008. Interest expense on our mortgage debt also decreased due to a decline in market interest rates period over period.

### ***Other Non-operating Income (Expense)***

Other non-operating income (expense) increased \$4.6 million primarily due to the gain on sale of a joint venture interest during the nine months ended September 30, 2009.

### ***Income Taxes***

Our effective tax rates for the nine months ended September 30, 2009 and 2008 are 29.4% and 36.8%, respectively. The difference in the effective rate between these periods is primarily due to the decrease in the calculated annualized effective rate for 2009 based on projected improvements in our performance. The rate was also impacted by our stock based compensation deduction as calculated under the FASB guidance on Share-Based Payment for 2009 due to the movements in the stock price between September 30, 2008 and September 30, 2009.

An additional interest charge related to our tax contingency reserve and a new uncertain tax position were recorded during the nine months ended September 30, 2009. Additionally, we settled an uncertain tax position as a result of a state audit during the nine months ended September 30, 2009. Tax returns for years 2005 through 2007 are subject to future examination by tax authorities. In addition, tax returns are open from 1999 through 2004 to the extent of the net operating losses generated during those periods.

### ***Critical Accounting Policies and Estimates***

For a description of our critical accounting policies and estimates, see our Annual Report on Form 10-K for the fiscal year ended December 31, 2008.

### ***Liquidity and Capital Resources***

The following is a summary of cash flows from operating, investing and financing activities, as reflected in the condensed consolidated statements of cash flows (dollars in thousands):

	Nine Months Ended September 30,	
	2009	2008
Cash provided by operating activities	\$ 185,972	\$ 107,354
Cash used in investing activities	(124,017)	(101,700)
Cash provided by (used in) financing activities	43,385	(50,673)
Net increase (decrease) in cash and cash equivalents	105,340	(45,019)
Cash and cash equivalents at beginning of period	53,973	100,904
Cash and cash equivalents at end of period	\$ 159,313	\$ 55,885

The increase in cash provided by operating activities was attributable to improved operating performance period over period as well as working capital management, partially offset by security deposits returned to prospective residents on a discontinued development project.

The increase in cash used in investing activities was primarily attributable to an increase in restricted cash balances funded (in order to reduce our letter of credit needs) related to the renegotiation of the line of credit in the current year which was partially offset by a reduction on spending on property, plant and equipment and leasehold improvements period over period, as well as cash received on a sale-leaseback transaction and for the sale of a joint venture interest in the current period. The prior year period also includes a cash payment received on outstanding notes receivable.

The increase in cash provided by financing activities period over period was primarily attributable to proceeds received from the public equity offering in the current period as well as a decrease in dividend payments due to the

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suspension of the dividend during the fourth quarter of 2008 and a decrease in swap termination payments during the current period, partially offset by a decrease in net borrowings in the current year period.

Our principal sources of liquidity have historically been from:

- cash balances on hand;
- cash flows from operations;
- proceeds from our credit facilities;
- proceeds from mortgage financing or refinancing of various assets;
- funds generated through joint venture arrangements or sale-leaseback transactions; and
- with somewhat lesser frequency, funds raised in the debt or equity markets and proceeds from the selective disposition of underperforming assets.

Over the longer-term, we expect to continue to fund our business through these principal sources of liquidity. Over the near-term, however, we expect a reduced level of mortgage refinancing activity. We also anticipate a reduced level of reliance on proceeds from our credit facility over the near-term compared to historical levels.

Our liquidity requirements have historically arisen from:

- working capital;
- operating costs such as employee compensation and related benefits, general and administrative expense and supply costs;
- debt service and lease payments;
- acquisition consideration and transaction costs;
- cash collateral required to be posted in connection with our interest rate swaps and related financial instruments;
- capital expenditures and improvements, including the expansion of our current communities and the development of new communities;
- dividend payments;
- purchases of common stock under our previous share repurchase authorization; and
- other corporate initiatives (including integration and branding).

Over the near-term, we expect that our liquidity requirements will primarily arise from:

- working capital;
- operating costs such as employee compensation and related benefits, general and administrative expense and supply costs;
- debt service and lease payments;
- capital expenditures and improvements, including the expansion of our current communities and the development of new communities;
- other corporate initiatives (including systems);
- acquisition consideration and transaction costs; and
- to a lesser extent, cash collateral required to be posted in connection with our interest rate swaps and related financial instruments.

We are highly leveraged and have significant debt and lease obligations. We have two principal corporate-level indebtednesses: our \$75.0 million amended credit facility (including a \$25.0 million letter of credit sublimit) and our unsecured facilities providing for up to \$48.5 million of letters of credit in the aggregate. The remainder of our indebtedness is generally comprised of non-recourse property-level mortgage financings.

During the nine months ended September 30, 2009, we completed a public equity offering which yielded \$163.7 million of net proceeds. In conjunction with the completion of the offering, we entered into an amendment to our credit facility which, among other things, reduced the maximum revolving loan commitment to \$75.0 million as discussed below. Proceeds from the offering were primarily used to repay the \$125.0 million of indebtedness which was outstanding under the credit facility.

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At September 30, 2009, we had \$2.1 billion of debt outstanding, excluding capital lease obligations, at a weighted-average interest rate of 3.89%. At September 30, 2009, we had \$323.5 million of capital and financing lease obligations, \$23.7 million of letters of credit had been issued under the amended credit facility, and \$48.5 million of letters of credit had been issued under our unsecured letter of credit facilities. Approximately \$155.4 million of our debt obligations are due on or before September 30, 2010. We also have substantial operating lease obligations and capital expenditure requirements. For the year ending September 30, 2010, we will be required to make approximately \$262.1 million of payments in connection with our existing operating leases.

We had \$159.3 million of cash and cash equivalents at September 30, 2009, excluding cash and escrow deposits-restricted and lease security deposits of \$189.4 million. Additionally, as of September 30, 2009, we had \$51.3 million available under our corporate credit facility, of which \$1.3 million can be drawn as letters of credit.

In late 2008, we began replacing some of our outstanding letters of credit with restricted cash in order to reduce our letter of credit needs.

As of September 30, 2009, we had \$155.4 million of current debt maturities. Although certain of our debt obligations are scheduled to mature on or prior to September 30, 2010, we have the option, subject to the satisfaction of customary conditions (such as the absence of a material adverse change), to extend the maturity of approximately \$131.0 million of certain non-recourse mortgages payable included in such debt until 2011, as the instruments associated with these mortgages payable provide that we can extend the respective maturity dates for one 12 month term each from the existing maturity dates.

At September 30, 2009, we had \$247.6 million of negative working capital, which includes the classification of \$208.5 million of refundable entrance fees and \$14.9 million in tenant deposits as current liabilities. Based upon our historical operating experience, we anticipate that only 9.0% to 12.0% of those entrance fee liabilities will actually come due, and be required to be settled in cash, during the next 12 months. We expect that any entrance fee liabilities due within the next 12 months will be fully offset by the proceeds generated by subsequent entrance fee sales. Entrance fee sales, net of refunds paid, provided \$23.4 million of cash for the nine months ended September 30, 2009.

For the year ending December 31, 2009, we anticipate that we will make investments of approximately \$50.0 million to \$55.0 million for capital expenditures (net of approximately \$90.0 million expected to be reimbursed from lenders/lessors or funded through construction financing), comprised of approximately \$21.0 million to \$23.0 million of net recurring capital expenditures, approximately \$2.0 million to \$3.0 million of net capital expenditures in connection with our community expansion and development program, and approximately \$27.0 million to \$29.0 million of expenditures relating to other major projects (including corporate initiatives). These major projects include unusual or non-recurring capital projects, projects which create new or enhanced economics, such as major renovations or repositioning projects at our communities (including deferred expenditures in connection with recently acquired communities), systems related expenditures, and expenditures supporting the expansion of our ancillary services programs. For the nine months ended September 30, 2009, we spent approximately \$12.0 million for net recurring capital expenditures and approximately \$11.9 million for expenditures relating to other major projects and corporate initiatives and had a net receipt of cash of approximately \$6.4 million (consisting of \$61.6 million for capital expenditures net of \$68.0 million that had been reimbursed as of September 30, 2009) in connection with our expansion and development program.

During 2009, we anticipate funding the majority of capital expenditures relating to our expansion and development program through debt and lease financings for those projects (approximately \$88.0 million in the aggregate). We expect that our other capital expenditures will be funded from cash on hand, cash flows from operations, and amounts drawn on our credit facility.

Through 2007, we focused on growth primarily through acquisition, spending approximately \$2.2 billion during 2007 and 2006 on acquiring communities and companies, excluding fees, expenses and assumption of debt. Given the market environment and limitations imposed by our credit facility, we have recently been focusing on integrating previous acquisitions and on the significant organic growth opportunities inherent in our growth strategy and have engaged in a reduced level of acquisition activity. Over the longer-term (and as opportunities arise over the near-term), we plan to take advantage of the fragmented continuing care, independent living and assisted living sectors by selectively purchasing existing operating companies, asset portfolios, home health agencies and communities. We may also seek to acquire the fee interest in communities that we currently lease or manage.

In the normal course of business, we use a variety of financial instruments to mitigate interest rate risk. We have entered into certain interest rate protection and swap agreements to effectively cap or convert floating rate debt to a fixed rate basis. Pursuant to certain of our hedge agreements, we are required to secure our obligation to the counterparty by posting cash or other collateral if the fair value liability exceeds specified thresholds. In periods of significant volatility in the credit markets, the value of these swaps can change significantly and as a result, the amount of collateral we are required to post can change significantly. We have recently taken a number of steps to reduce our collateral posting risk. In particular, during 2008 and the nine months ended September 30, 2009, we terminated a number of interest rate swaps with an aggregate notional amount of \$1.1 billion and purchased \$509.3 million in aggregate notional amount of interest rate caps, which do not require the posting of cash collateral. Furthermore, during 2008, we obtained \$37.6 million of swaps that are secured by underlying mortgaged assets and, hence, do not require cash collateralization. As of September 30, 2009, we have \$734.6 million in aggregate notional amount of interest rate caps, \$37.6 million in aggregate notional amount of swaps secured by underlying mortgaged assets, \$314.2 million in aggregate notional amount of swaps that require cash collateralization and \$93.0 million of variable rate debt that is not subject to any cap or swap agreements.

We expect to continue to assess our financing alternatives periodically and access the capital markets opportunistically. If our existing resources are insufficient to satisfy our liquidity requirements, or if we enter into an acquisition or strategic arrangement with another company, we may need to sell additional equity or debt securities. Any such sale of additional equity securities will dilute the interests of our existing stockholders, and we cannot be certain that additional public or private financing will be available in amounts or on terms acceptable to us, if at all (particularly given current market conditions). If we are unable to obtain this additional financing, we may be required to delay, reduce the scope of, or eliminate one or more aspects of our business development activities, any of which could reduce the growth of our business.

During late 2008 and the first half of 2009, we took steps to preserve our liquidity and increase our financial flexibility. For example, we suspended our quarterly dividend payments, terminated our share repurchase program and initiated a number of cost control measures (including limitations on our capital expenditures). In addition, we completed the public equity offering described above and repaid the outstanding borrowings on our corporate credit facility. We currently estimate that our existing cash flows from operations, together with existing working capital, amounts available under our credit facility and, to a lesser extent, proceeds from anticipated financings and refinancings of various assets, will be sufficient to fund our liquidity needs for at least the next 12 months, assuming that the overall economy does not substantially deteriorate further.

Our actual liquidity and capital funding requirements depend on numerous factors, including our operating results, the actual level of capital expenditures, our expansion, development and acquisition activity, general economic conditions and the cost of capital. Shortfalls in cash flows from operating results or other principal sources of liquidity may have an adverse impact on our ability to execute our business and growth strategies. The current volatility in the credit and financial markets may also have an adverse impact on our liquidity by making it more difficult for us to obtain financing or refinancing. As a result, this may impact our ability to grow our business, maintain capital spending levels, expand certain communities, or execute other aspects of our business strategy. In order to continue some of these activities at historical or planned levels, we may incur additional indebtedness or lease financing to provide additional funding. There can be no assurance that any such additional financing will be available or on terms that are acceptable to us (particularly in light of current adverse conditions in the credit market).

As of September 30, 2009, we are in compliance with the financial covenants of our outstanding debt and lease agreements.

#### **Credit Facilities**

As of January 1, 2009, we had an available secured line of credit of \$245.0 million (including a \$70.0 million letter of credit sublimit), an associated letter of credit facility of up to \$80.0 million, and separate letter of credit facilities of up to \$42.5 million in the aggregate. The line of credit bore interest at the base rate plus 3.0% or LIBOR plus 4.0%, at our election, and was scheduled to mature on May 15, 2009. We were required to pay fees ranging from 2.5% to 4.0% of the amount of any outstanding letters of credit issued under the associated letter of credit facility and are required to pay a fee of 2.5% of the amount of any outstanding letters of credit issued under the separate letter of credit facilities.

*Refinancing of Line of Credit*

During late 2008 and early 2009, we entered into unsecured facilities with a financial institution, maturing in November 2011, providing for up to \$48.5 million of letters of credit in the aggregate and entered into a Second Amended and Restated Credit Agreement, dated February 27, 2009, with Bank of America, N.A., as administrative agent, Banc of America Securities LLC, as sole lead arranger and book manager, and the several lenders from time to time parties thereto. The amended credit agreement amended and restated our previous \$245.0 million secured line of credit and terminated the associated \$80.0 million letter of credit facility.

The amended credit agreement initially consisted of a \$230.0 million revolving loan facility with a \$25.0 million letter of credit sublimit and is scheduled to mature on August 31, 2010.

Pursuant to the terms of the amended credit agreement, certain of our subsidiaries, as guarantors, will guarantee our obligations under the amended credit agreement and the other loan documents. Further, in connection with the amended credit agreement, (i) the company and certain guarantors executed and delivered a Pledge Agreement in favor of the administrative agent for the banks and other financial institutions from time to time parties to the amended credit agreement, pursuant to which such guarantors pledged certain assets for the benefit of the secured parties as collateral security for the payment and performance of our obligations under the amended credit agreement and the other loan documents and (ii) certain guarantors granted mortgages and executed and delivered a Security Agreement, in each case, in favor of the administrative agent for the banks and other financial institutions from time to time parties to the amended credit agreement encumbering certain real and personal property of such guarantors. The collateral includes, among other things, certain real property and related personal property owned by the guarantors, equity interests in certain of our subsidiaries, all related books and records and, to the extent not otherwise included, all proceeds and products of any and all of the foregoing.

At our option, amounts drawn under the revolving loan facility initially bore interest at either (i) LIBOR plus a margin of 7.0% or (ii) the greater of (a) the Bank of America prime rate or (b) the Federal Funds rate plus 0.5%, plus a margin of 7.0%. For purposes of determining the interest rate, in no event shall the base rate or LIBOR be less than 3.0%. In connection with the loan commitments, we will pay a quarterly commitment fee of 1.0% per annum on the average daily amount of undrawn funds. We were initially required to pay a fee equal to 7.0% of the amount of any issued and outstanding letters of credit; provided, with respect to drawable amounts that have been cash collateralized, the letter of credit fee shall be payable at a rate per annum equal to 2.0%.

The amended credit agreement contains typical representations and covenants for loans of this type, including restrictions on our ability to pay dividends, make distributions, make acquisitions, incur capital expenditures, incur new liens, or repurchase shares of our common stock. The amended credit agreement also contains financial covenants, including covenants with respect to maximum consolidated adjusted leverage, minimum consolidated fixed charge coverage, minimum tangible net worth, and maximum total capital expenditures. A violation of any of these covenants (including any failure to remain in compliance with any financial covenants contained therein) could result in a default under the amended credit agreement, which would result in termination of all commitments and loans under the amended credit agreement and all other amounts owing under the amended credit agreement and certain other loan agreements becoming immediately due and payable.

On June 1, 2009, in connection with the equity offering described above, we entered into the First Amendment to the Second Amended and Restated Credit Agreement (the "First Amendment") pursuant to which the maximum revolving loans that can be outstanding at any time under the amended credit agreement was reduced to \$75.0 million. In addition, the interest rate margin on loans, as well as fees on letters of credit, as a result of the maximum amount of the facility having been reduced to \$75.0 million, was reduced to 6.0%.

Pursuant to the First Amendment, we were given greater flexibility to make acquisitions by increasing aggregate permitted cash consideration from \$10.0 million to \$100.0 million, to make capital expenditures up to \$30.0 million per quarter and to incur an additional \$20.0 million in liens and letters of credit.

As of September 30, 2009, we have an available secured line of credit of \$75.0 million (including a \$25.0 million letter of credit sublimit) and separate unsecured letter of credit facilities of up to \$48.5 million in the aggregate. As of September 30, 2009, there were no borrowings under the revolving loan facility, \$23.7 million of letters of credit has been issued under the amended credit facility, and \$48.5 million of letters of credit had been issued under our unsecured letter of credit facilities.

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### **Contractual Commitments**

Significant ongoing commitments consist primarily of leases, debt, purchase commitments and certain other long-term liabilities. For a summary and complete presentation and description of our ongoing commitments and contractual obligations, see the "Contractual Commitments" section of Management's Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report on Form 10-K for the fiscal year ended December 31, 2008.

There have been no material changes in our contractual commitments during the nine months ended September 30, 2009 other than with respect to the repayment of the entire outstanding balance on our line of credit in connection with the public equity offering discussed above.

### **Off-Balance Sheet Arrangements**

The equity method of accounting has been applied in the accompanying financial statements with respect to our investment in unconsolidated ventures that are not considered variable interest entities as we do not possess a controlling financial interest. We do not believe these off-balance sheet arrangements have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that are material to investors.

### **Non-GAAP Financial Measures**

A non-GAAP financial measure is generally defined as one that purports to measure historical or future financial performance, financial position or cash flows, but excludes or includes amounts that would not be so adjusted in the most comparable GAAP measure. In this report, we define and use the non-GAAP financial measures Adjusted EBITDA, Cash From Facility Operations and Facility Operating Income, as set forth below.

#### ***Adjusted EBITDA***

##### ***Definition of Adjusted EBITDA***

We define Adjusted EBITDA as follows:

###### ***Net income (loss) before:***

- provision (benefit) for income taxes;
- non-operating (income) expense items;
- depreciation and amortization (including non-cash impairment charges);
- straight-line lease expense (income);
- amortization of deferred gain;
- amortization of deferred entrance fees; and
- non-cash compensation expense;

###### ***and including:***

- entrance fee receipts and refunds (excluding certain first generation entrance fee receipts on newly opened entrance fee CCRCs).

In the current period, we clarified the definition of Adjusted EBITDA to exclude initial entrance fees received from the sale of units at newly opened entrance fee CCRCs where the Company is required to apply such entrance fee proceeds to satisfy debt.



*Management's Use of Adjusted EBITDA*

We use Adjusted EBITDA to assess our overall financial and operating performance. We believe this non-GAAP measure, as we have defined it, is helpful in identifying trends in our day-to-day performance because the items excluded have little or no significance on our day-to-day operations. This measure provides an assessment of controllable expenses and affords management the ability to make decisions which are expected to facilitate meeting current financial goals as well as achieve optimal financial performance. It provides an indicator for management to determine if adjustments to current spending decisions are needed.

Adjusted EBITDA provides us with a measure of financial performance, independent of items that are beyond the control of management in the short-term, such as depreciation and amortization (including non-cash impairment charges), straight-line lease expense (income), taxation and interest expense associated with our capital structure. This metric measures our financial performance based on operational factors that management can impact in the short-term, namely the cost structure or expenses of the organization. Adjusted EBITDA is one of the metrics used by senior management and the board of directors to review the financial performance of the business on a monthly basis. Adjusted EBITDA is also used by research analysts and investors to evaluate the performance of and value companies in our industry.

*Limitations of Adjusted EBITDA*

Adjusted EBITDA has limitations as an analytical tool. It should not be viewed in isolation or as a substitute for GAAP measures of earnings. Material limitations in making the adjustments to our earnings to calculate Adjusted EBITDA, and using this non-GAAP financial measure as compared to GAAP net income (loss), include:

- the cash portion of interest expense, income tax (benefit) provision and non-recurring charges related to gain (loss) on sale of communities and extinguishment of debt activities generally represent charges (gains), which may significantly affect our financial results; and
- depreciation and amortization, though not directly affecting our current cash position, represent the wear and tear and/or reduction in value of our communities, which affects the services we provide to our residents and may be indicative of future needs for capital expenditures.

An investor or potential investor may find this item important in evaluating our performance, results of operations and financial position. We use non-GAAP financial measures to supplement our GAAP results in order to provide a more complete understanding of the factors and trends affecting our business.

Adjusted EBITDA is not an alternative to net income, income from operations or cash flows provided by or used in operations as calculated and presented in accordance with GAAP. You should not rely on Adjusted EBITDA as a substitute for any such GAAP financial measure. We strongly urge you to review the reconciliation of Adjusted EBITDA to GAAP net income (loss), along with our condensed consolidated financial statements included herein. We also strongly urge you to not rely on any single financial measure to evaluate our business. In addition, because Adjusted EBITDA is not a measure of financial performance under GAAP and is susceptible to varying calculations, the Adjusted EBITDA measure, as presented in this report, may differ from and may not be comparable to similarly titled measures used by other companies.

The table below shows the reconciliation of net loss to Adjusted EBITDA for the three and nine months ended September 30, 2009 and 2008 (dollars in thousands):

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	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009 (1)	2008 (1)	2009 (1)	2008 (1)
Net loss	\$ (21,290)	\$ (35,877)	\$ (45,456)	\$ (94,455)
Benefit for income taxes	(7,329)	(22,338)	(18,936)	(54,996)
Equity in (earnings) loss of unconsolidated ventures	(42)	(358)	(1,218)	750
Loss on extinguishment of debt	1,178	—	2,918	3,052
Other non-operating expense (income)	52	(69)	(4,172)	424
Interest expense:				
Debt	23,276	30,743	75,071	90,365
Capitalized lease obligation	7,298	6,856	21,774	20,529
Amortization of deferred financing costs	2,167	3,004	7,099	6,940
Change in fair value of derivatives and amortization	2,478	8,454	(1,137)	17,344
Interest income	(623)	(1,383)	(1,771)	(6,169)
Income (loss) from operations	7,165	(10,968)	34,172	(16,216)
Depreciation and amortization	66,983	67,066	202,378	207,882
Straight-line lease expense	3,793	4,709	12,073	15,675
Amortization of deferred gain	(1,088)	(1,086)	(3,259)	(3,257)
Amortization of entrance fees	(5,742)	(4,707)	(16,084)	(16,527)
Non-cash compensation expense	7,869	6,737	21,549	23,368
Entrance fee receipts <sup>(2)</sup>	21,931	11,526	40,257	30,395
First generation entrance fees received <sup>(3)</sup>	(10,626)	—	(10,626)	—
Entrance fee disbursements	(4,649)	(5,856)	(16,842)	(14,331)
Adjusted EBITDA	\$ 85,636	\$ 67,421	\$ 263,618	\$ 226,989

- (1) The calculation of Adjusted EBITDA includes integration and acquisition-related costs for the three and nine months ended September 30, 2009 of \$2.2 million and \$2.7 million, respectively. Integration and hurricane and named tropical storms expense as well as other non-recurring costs were \$7.5 million for the three months ended September 30, 2008 and \$20.8 million for the nine months ended September 30, 2008. The amount for the nine months ended September 30, 2008 includes the effect of an \$8.0 million reserve established for certain litigation.
- (2) Includes the receipt of refundable and nonrefundable entrance fees.
- (3) First generation entrance fees received represents initial entrance fees received from the sale of units at a newly opened entrance fee CCRC where the Company is required to apply such entrance fee proceeds to satisfy debt.

### Cash From Facility Operations

#### Definition of Cash From Facility Operations

We define Cash From Facility Operations (CFFO) as follows:

Net cash provided by (used in) operating activities adjusted for:

- changes in operating assets and liabilities;
- deferred interest and fees added to principal;
- refundable entrance fees received;
- certain first generation entrance fee receipts on newly opened entrance fee CCRCs;
- entrance fee refunds disbursed;
- lease financing debt amortization with fair market value or no purchase options;
- other; and
- recurring capital expenditures.

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In the current period, we clarified the definition of CFFO to exclude initial entrance fees received from the sale of units at newly opened entrance fee CCRCs where the Company is required to apply such entrance fee proceeds to satisfy debt.

Recurring capital expenditures include expenditures capitalized in accordance with GAAP that are funded from CFFO. Amounts excluded from recurring capital expenditures consist primarily of unusual or non-recurring capital items (including integration capital expenditures), community purchases and/or major projects or renovations that are funded using financing proceeds and/or proceeds from the sale of communities that are held for sale.

### *Management's Use of Cash From Facility Operations*

We use CFFO to assess our overall liquidity. This measure provides an assessment of controllable expenses and affords management the ability to make decisions which are expected to facilitate meeting current financial and liquidity goals as well as to achieve optimal financial performance. It provides an indicator for management to determine if adjustments to current spending decisions are needed.

This metric measures our liquidity based on operational factors that management can impact in the short-term, namely the cost structure or expenses of the organization. CFFO is one of the metrics used by our senior management and board of directors (i) to review our ability to service our outstanding indebtedness (including our credit facilities and long-term leases), (ii) to review our ability to pay dividends to stockholders, (iii) to review our ability to make regular recurring capital expenditures to maintain and improve our communities on a period-to-period basis, (iv) for planning purposes, including preparation of our annual budget, (v) in making compensation determinations for certain of our associates (including our named executive officers) and (vi) in setting various covenants in our credit agreements. These agreements generally require us to escrow or spend a minimum of between \$250 and \$450 per unit/bed per year. Historically, we have spent in excess of these per unit/bed amounts; however, there is no assurance that we will have funds available to escrow or spend these per unit/bed amounts in the future. If we do not escrow or spend the required minimum annual amounts, we would be in default of the applicable debt or lease agreement which could trigger cross default provisions in our outstanding indebtedness and lease arrangements.

### *Limitations of Cash From Facility Operations*

CFFO has limitations as an analytical tool. It should not be viewed in isolation or as a substitute for GAAP measures of cash flow from operations. CFFO does not represent cash available for dividends or discretionary expenditures, since we may have mandatory debt service requirements or other non-discretionary expenditures not reflected in the measure. Material limitations in making the adjustment to our cash flow from operations to calculate CFFO, and using this non-GAAP financial measure as compared to GAAP operating cash flows, include:

- the cash portion of interest expense, income tax (benefit) provision and non-recurring charges related to gain (loss) on sale of communities and extinguishment of debt activities generally represent charges (gains), which may significantly affect our financial results; and
- depreciation and amortization, though not directly affecting our current cash position, represent the wear and tear and/or reduction in value of our communities, which affects the services we provide to our residents and may be indicative of future needs for capital expenditures.

We believe CFFO is useful to investors because it assists their ability to meaningfully evaluate (1) our ability to service our outstanding indebtedness, including our credit facilities and capital and financing leases, (2) our ability to pay dividends to stockholders and (3) our ability to make regular recurring capital expenditures to maintain and improve our communities.

CFFO is not an alternative to cash flows provided by or used in operations as calculated and presented in accordance with GAAP. You should not rely on CFFO as a substitute for any such GAAP financial measure. We strongly urge you to review the reconciliation of CFFO to GAAP net cash provided by (used in) operating activities, along with our condensed consolidated financial statements included herein. We also strongly urge you to not rely on any single financial measure to evaluate our business. In addition, because CFFO is not a measure of financial performance under GAAP and is susceptible to varying calculations, the CFFO measure, as presented in this report, may differ from and may not be comparable to similarly titled measures used by other companies.

The table below shows the reconciliation of net cash provided by operating activities to CFFO for the three and nine months ended September 30, 2009 and 2008 (dollars in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009 <sup>(1)</sup>	2008 <sup>(1)</sup>	2009 <sup>(1)</sup>	2008 <sup>(1)</sup>
Net cash provided by operating activities	\$ 72,900	\$ 30,630	\$ 185,972	\$ 107,354
Changes in operating assets and liabilities	(11,438)	2,062	(7,221)	13,303
Refundable entrance fees received <sup>(2)(3)</sup>	9,296	4,273	17,032	15,185
First generation entrance fees received <sup>(4)</sup>	(10,626)	—	(10,626)	—
Entrance fee refunds disbursed	(4,649)	(5,856)	(16,842)	(14,331)
Recurring capital expenditures, net	(5,495)	(6,965)	(12,038)	(19,616)
Lease financing debt amortization with fair market value or no purchase options	(1,793)	(1,688)	(5,371)	(4,975)
Reimbursement of operating expenses and other	—	—	—	794
<b>Cash From Facility Operations</b>	<b>\$ 48,195</b>	<b>\$ 22,456</b>	<b>\$ 150,906</b>	<b>\$ 97,714</b>

- (1) The calculation of CFFO includes integration and acquisition-related costs for the three and nine months ended September 30, 2009 of \$2.2 million and \$2.7 million, respectively. Integration and hurricane and named tropical storms expense as well as other non-recurring costs were \$7.5 million for the three months ended September 30, 2008 and \$20.8 million for the nine months ended September 30, 2008. The amount for the nine months ended September 30, 2008 includes the effect of an \$8.0 million reserve established for certain litigation.
- (2) Entrance fee receipts include promissory notes issued to the Company by the resident in lieu of a portion of the entrance fees due. Notes issued (net of collections) for the three and nine months ended September 30, 2009 were \$3.3 million and \$6.8 million, respectively. Notes issued (net of collections) for the three and nine months ended September 30, 2008 were not material.
- (3) Total entrance fee receipts for the three months ended September 30, 2009 and 2008 were \$21.9 million and \$11.5 million, respectively, including \$12.6 million and \$7.3 million, respectively, of nonrefundable entrance fee receipts included in net cash provided by operating activities. Total entrance fee receipts for the nine months ended September 30, 2009 and 2008 were \$40.3 million and \$30.4 million, respectively, including \$23.2 million and \$15.2 million, respectively, of nonrefundable entrance fee receipts included in net cash provided by operating activities.
- (4) First generation entrance fees received represents initial entrance fees received from the sale of units at a newly opened entrance fee CCRC where the Company is required to apply such entrance fee proceeds to satisfy debt.

#### **Facility Operating Income**

##### **Definition of Facility Operating Income**

We define Facility Operating Income as follows:

Net income (loss) before:

- provision (benefit) for income taxes;
- non-operating (income) expense items;
- depreciation and amortization (including non-cash impairment charges);
- facility lease expense;
- general and administrative expense, including non-cash stock compensation expense;
- amortization of deferred entrance fee revenue; and
- management fees.

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### *Management's Use of Facility Operating Income*

We use Facility Operating Income to assess our facility operating performance. We believe this non-GAAP measure, as we have defined it, is helpful in identifying trends in our day-to-day facility performance because the items excluded have little or no significance on our day-to-day facility operations. This measure provides an assessment of revenue generation and expense management and affords management the ability to make decisions which are expected to facilitate meeting current financial goals as well as to achieve optimal facility financial performance. It provides an indicator for management to determine if adjustments to current spending decisions are needed.

Facility Operating Income provides us with a measure of facility financial performance, independent of items that are beyond the control of management in the short-term, such as depreciation and amortization, lease expense, taxation and interest expense associated with our capital structure. This metric measures our facility financial performance based on operational factors that management can impact in the short-term, namely the cost structure or expenses of the organization. Facility Operating Income is one of the metrics used by our senior management and board of directors to review the financial performance of the business on a monthly basis. Facility Operating Income is also used by research analysts and investors to evaluate the performance of and value companies in our industry by investors, lenders and lessors. In addition, Facility Operating Income is a common measure used in the industry to value the acquisition or sales price of communities and is used as a measure of the returns expected to be generated by a community.

A number of our debt and lease agreements contain covenants measuring Facility Operating Income to gauge debt or lease coverages. The debt or lease coverage covenants are generally calculated as facility net operating income (defined as total operating revenue less operating expenses, all as determined on an accrual basis in accordance with GAAP). For purposes of the coverage calculation, the lender or lessor will further require a pro forma adjustment to facility operating income to include a management fee (generally 4% to 5% of operating revenue) and an annual capital reserve (generally \$250 to \$450 per unit/bed). An investor or potential investor may find this item important in evaluating our performance, results of operations and financial position, particularly on a facility-by-facility basis.

### *Limitations of Facility Operating Income*

Facility Operating Income has limitations as an analytical tool. It should not be viewed in isolation or as a substitute for GAAP measures of earnings. Material limitations in making the adjustments to our earnings to calculate Facility Operating Income, and using this non-GAAP financial measure as compared to GAAP net income (loss), include:

- interest expense, income tax (benefit) provision and non-recurring charges related to gain (loss) on sale of communities and extinguishment of debt activities generally represent charges (gains), which may significantly affect our financial results; and
- depreciation and amortization, though not directly affecting our current cash position, represent the wear and tear and/or reduction in value of our communities, which affects the services we provide to our residents and may be indicative of future needs for capital expenditures.

An investor or potential investor may find this item important in evaluating our performance, results of operations and financial position on a facility-by-facility basis. We use non-GAAP financial measures to supplement our GAAP results in order to provide a more complete understanding of the factors and trends affecting our business.

Facility Operating Income is not an alternative to net income, income from operations or cash flows provided by or used in operations as calculated and presented in accordance with GAAP. You should not rely on Facility Operating Income as a substitute for any such GAAP financial measure. We strongly urge you to review the reconciliation of Facility Operating Income to GAAP net income (loss), along with our condensed consolidated financial statements included herein. We also strongly urge you to not rely on any single financial measure to evaluate our business. In addition, because Facility Operating Income is not a measure of financial performance under GAAP and is susceptible to varying calculations, the Facility Operating Income measure, as presented in this report, may differ from and may not be comparable to similarly titled measures used by other companies.

The table below shows the reconciliation of net loss to Facility Operating Income for the three and nine months ended September 30, 2009 and 2008 (dollars in thousands):

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	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Net loss	\$ (21,290)	\$ (35,877)	\$ (45,456)	\$ (94,455)
Benefit for income taxes	(7,329)	(22,338)	(18,936)	(54,996)
Equity in (earnings) loss of unconsolidated ventures	(42)	(358)	(1,218)	750
Loss on extinguishment of debt	1,178	—	2,918	3,052
Other non-operating expense (income)	52	(69)	(4,172)	424
Interest expense:				
Debt	23,276	30,743	75,071	90,365
Capitalized lease obligation	7,298	6,856	21,774	20,529
Amortization of deferred financing costs	2,167	3,004	7,099	6,940
Change in fair value of derivatives and amortization	2,478	8,454	(1,137)	17,344
Interest income	(623)	(1,383)	(1,771)	(6,169)
Income (loss) from operations	7,165	(10,968)	34,172	(16,216)
Depreciation and amortization	66,983	67,066	202,378	207,882
Facility lease expense	68,036	67,017	204,211	202,028
General and administrative (including non-cash stock compensation expense)	34,720	32,948	100,148	109,633
Amortization of entrance fees	(5,742)	(4,707)	(16,084)	(16,527)
Management fees	(1,987)	(1,527)	(5,002)	(5,604)
Facility Operating Income	\$ 169,175	\$ 149,829	\$ 519,823	\$ 481,196

**Item 3. Quantitative and Qualitative Disclosures About Market Risk**

We are subject to market risks from changes in interest rates charged on our credit facilities, other floating-rate indebtedness and lease payments subject to floating rates. The impact on earnings and the value of our long-term debt and lease payments are subject to change as a result of movements in market rates and prices. As of September 30, 2009, we had approximately \$953.1 million of long-term fixed rate debt, \$1.0 billion of long-term variable rate debt and \$323.5 million of capital and financing lease obligations. As of September 30, 2009, our total fixed-rate debt and variable-rate debt outstanding had weighted-average interest rates of 3.89%.

We enter into certain interest rate swap agreements with major financial institutions to manage our risk on variable rate debt. Additionally, during 2008 and 2009, we entered into certain cap agreements to effectively manage our risk above certain interest rates. As of September 30, 2009, \$1.3 billion, or 61.3%, of our debt, excluding capital and financing lease obligations, either has fixed rates or variable rates that are subject to swap agreements. As of September 30, 2009, \$734.6 million, or 34.4%, of our debt, excluding capital and financing lease obligations, is subject to cap agreements. The remaining \$93.0 million, or 4.4%, of our debt is variable rate debt, not subject to any cap or swap agreements. A change in interest rates would have impacted our interest rate expense related to all outstanding variable rate debt, excluding capital and financing lease obligations, as follows: a one, five and ten percent change in interest rates would have an impact of \$7.5 million, \$39.0 million and \$52.5 million, respectively.

As noted above, we have entered into certain interest rate protection and swap agreements to effectively cap or convert floating rate debt to a fixed rate basis, as well as to hedge anticipated future financing transactions. Pursuant to certain of our hedge agreements, we are required to secure our obligation to the counterparty by posting cash or other collateral if the fair value liability exceeds a specified threshold.

#### **Item 4. Controls and Procedures**

##### *Evaluation of Disclosure Controls and Procedures*

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this report. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer each concluded that, as of September 30, 2009, our disclosure controls and procedures were effective.

##### *Changes in Internal Control over Financial Reporting*

There has not been any change in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the fiscal quarter ended September 30, 2009 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

#### **PART II. OTHER INFORMATION**

##### **Item 1. Legal Proceedings**

The information contained in Note 9 to the Condensed Consolidated Financial Statements contained in Part I, Item 1 of this Quarterly Report on Form 10-Q is incorporated herein by this reference. See the Company's Quarterly Report on 10-Q for the quarter ended June 30, 2009 for a summary of certain litigation that was settled during that period.

##### **Item 1A. Risk Factors**

For information regarding the most significant risks facing the Company, please see the risk factors set forth in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2008, filed with the SEC on March 2, 2009, as well as the risks discussed below. There have been no material changes to the risk factors contained in our Form 10-K other than as set forth below.

***Recent disruptions in the financial markets could affect our ability to obtain financing or to extend or refinance debt as it matures, which could negatively impact our liquidity, financial condition and the market price of our common stock.***

The United States stock and credit markets have recently experienced significant price volatility, dislocations and liquidity disruptions, which have caused market prices of many stocks to fluctuate substantially and the spreads on prospective debt financings to widen considerably. These circumstances have materially impacted liquidity in the financial markets, making terms for certain financings less attractive, and in some cases have resulted in the unavailability of financing. Continued uncertainty in the stock and credit markets may negatively impact our ability to access additional financing (including any refinancing or extension of our existing debt) on reasonable terms, which may negatively affect our business.

As of September 30, 2009, we had an available secured line of credit of \$75.0 million (including a \$25.0 million letter of credit sublimit) and separate letter of credit facilities of up to \$48.5 million in the aggregate. As of September 30, 2009, we also had \$155.4 million of debt that is scheduled to mature during the twelve months ending September 30, 2010. If we are unable to extend our credit facility, or enter into a new credit facility, at or prior to its August 31, 2010 maturity date or extend (or refinance, as applicable) any of our other debt or letter of credit facilities prior to their scheduled maturity dates, our liquidity and financial condition could be adversely impacted. In addition, even if we are able to extend or replace our credit facility at or prior to its maturity or extend or refinance our other maturing debt or letter of credit facilities, the terms of the new financing may not be as favorable to us as the terms of the existing financing.

A prolonged downturn in the financial markets may cause us to seek alternative sources of potentially less attractive financing, and may require us to further adjust our business plan accordingly. These events also may make it more difficult or costly for us to raise capital, including through the issuance of common stock. Continued disruptions in

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the financial markets could have an adverse effect on us and our business. If we are not able to obtain additional financing on favorable terms, we also may have to delay or abandon some or all of our growth strategies, which could adversely affect our revenues and results of operations.

***If we are not able to satisfy the conditions precedent to exercising the extension options associated with certain of our debt agreements, our liquidity and financial condition could be negatively impacted.***

Our consolidated financial statements reflect approximately \$155.4 million of debt obligations due on or prior to September 30, 2010. Although these debt obligations are scheduled to mature on or prior to September 30, 2010, we have the option, subject to the satisfaction of customary conditions (such as the absence of a material adverse change), to extend the maturity of approximately \$131.0 million of certain non-recourse mortgages payable included in such debt until 2011, as the instruments associated with such mortgages payable provide that we can extend the respective maturity dates for one 12 month term each from the existing maturity dates. We presently anticipate that we will exercise the extension options and will satisfy the conditions precedent for doing so with respect to each of these obligations. If we are not able to satisfy the conditions precedent to exercising these extension options, our liquidity and financial condition could be adversely impacted.

***If the ownership of our common stock continues to be highly concentrated, it may prevent you and other stockholders from influencing significant corporate decisions and may result in conflicts of interest.***

As of September 30, 2009, funds managed by affiliates of Fortress beneficially own 60,875,826 shares, or approximately 51.3% of our outstanding common stock (excluding unvested restricted shares). In addition, two of our directors are associated with Fortress. As a result, funds managed by affiliates of Fortress are able to control fundamental and significant corporate matters and transactions, including: the election of directors; mergers, consolidations or acquisitions; the sale of all or substantially all of our assets and other decisions affecting our capital structure; the amendment of our amended and restated certificate of incorporation and our amended and restated by-laws; and the dissolution of the Company. Fortress's interests, including its ownership of the North American operations of Holiday Retirement Corp., one of our competitors, may conflict with your interests. Their control of the Company could delay, deter or prevent acts that may be favored by our other stockholders such as hostile takeovers, changes in control of the Company and changes in management. As a result of such actions, the market price of our common stock could decline or stockholders might not receive a premium for their shares in connection with a change of control of the Company.

***The market price of our common stock could be negatively affected by sales of substantial amounts of our common stock in the public markets.***

At September 30, 2009, 118,618,457 shares of our common stock were outstanding (excluding unvested restricted shares). All of the shares of our common stock are freely transferable, except for any shares held by our "affiliates," as that term is defined in Rule 144 under the Securities Act of 1933, as amended, or the Securities Act, or any shares otherwise subject to the limitations of Rule 144.

Pursuant to our Stockholders Agreement, Fortress and certain of its affiliates and permitted third-party transferees have the right, in certain circumstances, to require us to register their shares of our common stock under the Securities Act for sale into the public markets. Upon the effectiveness of such a registration statement, all shares covered by the registration statement will be freely transferable. In connection with our obligations under the Stockholders Agreement, we received a request from Fortress to file a registration statement on Form S-3 to permit the resale, from time to time, of up to 60,875,826 shares of common stock owned by certain affiliates of Fortress. The registration statement on Form S-3 was declared effective on May 22, 2009.

In addition, as of Sept 30, 2009, we had registered under the Securities Act an aggregate of 12,100,000 shares for issuance under our Omnibus Stock Incentive Plan, an aggregate of 1,000,000 shares for issuance under our Associate Stock Purchase Plan and an aggregate of 100,000 shares for issuance under our Director Stock Purchase Plan. In accordance with the terms of the Omnibus Stock Incentive Plan, the number of shares available for issuance automatically increases by 400,000 shares on January 1 of each year. Pursuant to the terms of the Associate Stock Purchase Plan, the number of shares available for purchase under the plan will automatically increase by 200,000 shares on the first day of each calendar year beginning January 1, 2010. Subject to any restrictions imposed on the shares and options granted under our stock incentive programs, shares registered under these registration statements will be available for sale into the public markets.



***Our ability to use net operating loss carryovers to reduce future tax payments may be limited.***

Section 382 of the Internal Revenue Code contains rules that limit the ability of a company that undergoes an ownership change, which is generally any change in ownership of more than 50% of its stock over a three-year period, to utilize its net operating loss carryforwards and certain built-in losses recognized in years after the ownership change. These rules generally operate by focusing on ownership changes involving stockholders owning directly or indirectly 5% or more of the stock of a company and any change in ownership arising from a new issuance of stock by the company. The determination of whether an ownership change occurs is complex and not within the control of the company. Consequently, no assurance can be provided as to whether an ownership change has occurred or will occur in the future. Generally, if an ownership change occurs, the yearly limitation is equal to the product of the applicable long term tax exempt rate and the value of the Company's stock immediately before the ownership change.

**Item 5. Other Information**

Our Board of Directors has unanimously approved an amendment to our Amended and Restated Certificate of Incorporation to effectuate an increase in the authorized number of directors from not more than eight members to not more than nine members, so that we may offer W.E. Sheriff, our Chief Executive Officer, the opportunity to join our Board. On November 4, 2009, certain stockholders (including funds managed by affiliates of Fortress Investment Group LLC) who are party to the Stockholders Agreement dated November 28, 2005, as amended, executed a written consent approving the foregoing amendment. This consent constitutes the consent of a majority of the total number of shares of our outstanding common stock entitled to vote in the election of directors and is sufficient to approve the amendment to our Certificate of Incorporation.

The amendment to our Certificate of Incorporation will become effective approximately 20 days after we send notice of the action taken by written consent to our stockholders. Promptly following the effective date of the amendment, our Board intends to approve a corresponding amendment to our Amended and Restated Bylaws increasing the maximum size of our Board. The Board then intends to formally increase the allowed number of directors to nine and appoint Mr. Sheriff as a Class I director, to serve until the annual meeting of stockholders to be held in 2011 and until his successor is duly elected and qualified. Mr. Sheriff's appointment to our Board has been unanimously recommended by our Nominating and Corporate Governance Committee.

In connection with the amendment to our Certificate of Incorporation discussed above, on November 4, 2009, we and the Fortress stockholders entered into Amendment Number Two to our Stockholders Agreement, dated as of November 28, 2005. Among other things, the amendment amended our Stockholders Agreement to provide that our Board will consist of not more than nine directors and that FIG LLC, an affiliate of Fortress Investment Group LLC, will be able to designate four directors, or if the Board is composed of eight or nine directors, five directors, for so long as the Fortress stockholders and their permitted transferees beneficially own more than 35% of the voting power of our common stock (as compared to the 50% ownership threshold in place prior to the amendment). The foregoing summary of certain provisions of the amendment to our Stockholders Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the amendment filed as Exhibit 4.4 hereto, which is incorporated herein by reference.

**Item 6. Exhibits**

See Exhibit Index immediately following the signature page hereto, which Exhibit Index is incorporated by reference as if fully set forth herein.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**BROOKDALE SENIOR LIVING INC.**  
(Registrant)

By: /s/ Mark W. Ohlendorf  
Name: Mark W. Ohlendorf  
Title: Co-President and Chief Financial Officer  
(Principal Financial and Accounting Officer)  
Date: November 4, 2009

**EXHIBIT INDEX**

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>
3.1	Amended and Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q filed on August 14, 2006).
3.2	Amended and Restated Bylaws of the Company (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on December 20, 2007).
4.1	Form of Certificate for common stock (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-1 (Amendment No. 3) (No. 333-127372) filed on November 7, 2005).
4.2	Stockholders Agreement, dated as of November 28, 2005, by and among Brookdale Senior Living Inc., FIT-ALT Investor LLC, Fortress Brookdale Acquisition LLC, Fortress Investment Trust II and Health Partners (incorporated by reference to Exhibit 4.2 to the Company's Annual Report on Form 10-K filed on March 31, 2006).
4.3	Amendment No. 1 to Stockholders Agreement, dated as of July 26, 2006, by and among Brookdale Senior Living Inc., FIT-ALT Investor LLC, Fortress Registered Investment Trust, Fortress Brookdale Investment Fund LLC, FRIT Holdings LLC, and FIT Holdings LLC (incorporated by reference to Exhibit 4.3 to the Company's Quarterly Report on Form 10-Q filed on August 14, 2006).
4.4	Amendment Number Two to Stockholders Agreement, dated as of November 4, 2009.
10.1	First Amendment to Brookdale Senior Living Inc. Omnibus Stock Incentive Plan, as amended and restated, effective as of October 30, 2009.
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

AMENDMENT NUMBER TWO TO  
STOCKHOLDERS AGREEMENT

AMENDMENT NUMBER TWO (this "Amendment") TO STOCKHOLDERS AGREEMENT, dated as of November 4, 2009, by and among Brookdale Senior Living Inc., a Delaware corporation (the "Company"), and those Stockholders listed on the signature pages hereto (collectively, the "Stockholders").

WITNESSETH

WHEREAS, the Company and the Stockholders are each a party to the Stockholders Agreement, dated as of November 28, 2005, by and among the Company and the Stockholders (or their predecessors), as amended by that certain Amendment Number One, dated as of July 25, 2006 (as amended, the "Agreement"; capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement); and

WHEREAS, the Company and the Stockholders have determined to amend the Agreement in accordance with Section 6.8 of the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto hereby amend the Agreement, without any further action of the Stockholders required, and otherwise agree as follows:

1. Section 3.1 of the Agreement is hereby amended and restated in its entirety to read as follows:

"(a) For so long as this Agreement is in effect, the Company and each of the Stockholders shall take all reasonable actions within their respective control (including voting or causing to be voted all of the Company Securities held of record or beneficially owned by such Stockholder) and take all other reasonably necessary action so as to elect to the board of directors of the Company (the "Board"), and to continue in office not more than nine (9) directors which shall include those directors designated by FIG LLC pursuant to Section 3.1(b). The Stockholders shall cause the Company to take all necessary or desirable action within its control to give effect to the provisions of this Section 3.1. The Company shall use its reasonable efforts so that a sufficient number of "independent directors" (as such term is defined in the applicable NYSE listing standards from time to time) are members of the Board in order for the Company to comply with the applicable listing standards of the NYSE without reliance on the "controlled company" exception contemplated thereby.

- (b) So long as the Fortress Stockholders and their Permitted Transferees have Beneficial Ownership of:

(i) more than 35% of the Voting Power of the Company, FIG LLC shall be entitled to designate four directors to the Board or, if the Board shall be comprised of eight or nine members, then FIG LLC shall be entitled to designate five directors to the Board,

Board, (ii) less than 35% but more than 25% of the Voting Power of the Company, FIG LLC shall be entitled to designate three directors to the

Board, and (iii) less than 25% but more than 10% of the Voting Power of the Company, FIG LLC shall be entitled to designate two directors to the

(iv) less than 10% but more than 5% of the Voting Power of the Company, FIG LLC shall be entitled to designate one director to the Board.

Each of the Stockholders shall vote or cause to be voted all of the Company Securities held of record or beneficially owned by such Stockholder and take all other reasonably necessary action so as to effect the purpose of this Section 3.1(b). The Company agrees to include in the slate of nominees recommended by the Board those persons designated by FIG LLC in accordance with the provisions of this Section 3.1(b) and to use its reasonable best efforts to cause the election of each such designee to the Board, including nominating such designees to be elected as directors, in each case subject to applicable law.

(c) *[Reserved]*

(d) If FIG LLC notifies the other Stockholders of its desire to remove, with or without cause, any director previously designated by it, each Stockholder shall vote or cause to be voted all of the shares of Company Securities held of record or beneficially owned by such Stockholder and take all other necessary actions to cause the removal of any director designated by FIG LLC, pursuant to this Section 3.1(d).

(e) In the event that any designee of FIG LLC shall for any reason cease to serve as a member of the Board during his term of office, the resulting vacancy on the Board will be filled by an individual designated by FIG LLC, and each of the Stockholders shall vote or cause to be voted all of the Company Securities held of record or beneficially by such Stockholder and take all other reasonably necessary action so as to effect the purpose of this Section 3.1(e).

(f) In the event that at any time the number of directors entitled to be designated by FIG LLC pursuant to Section 3.1(b) decreases, FIG LLC shall take reasonable actions to cause a sufficient number of designated directors to resign from the Board at or prior to the end of such designated director's term such that the number of designated directors after such resignation(s) equals the number of directors FIG LLC would have been entitled to designate pursuant to Section 3.1(b). Any vacancies created by such resignation may remain vacant until the next annual meeting of stockholders or filled by a majority vote of the Board. Notwithstanding the foregoing, such designees need not resign from the Board at or prior to the end of their designated term if the Nominating and Corporate Governance Committee recommends the nomination of such designee(s) for election at the next meeting.

(g) In the event that a vacancy is created at any time by the death, disability, retirement, resignation or removal of any director who FIG LLC is eligible to designate in accordance with Section 3.1(b), the Company agrees to take at any time and from time to time all actions

necessary to cause the vacancy created thereby to be filled as soon as practicable by a new designee by FIG LLC. In the event that a vacancy is created at any time by the death, disability, retirement, resignation or removal of any director who is not designated by FIG LLC in accordance with Section 3.1(b), such vacancy created thereby may be filled by a majority vote of the Board. Without limiting the provisions of Section 3.1(a), in the event that the size of the Board is expanded to more than nine directors, the Company agrees to take at any time and from time to time all actions necessary to cause the Board to continue to have the number of designees of FIG LLC that corresponds to the requirements of Section 3.1(b)."

2. Each reference in the Agreement to FIG Advisors or FIG Advisors, LLC is hereby amended to refer to FIG LLC.

3. Each of the Stockholders hereby reaffirms and ratifies the Agreement as modified hereby and acknowledges that the provisions (or portions thereof) of the Agreement which have not been modified or amended by this Amendment shall remain in full force and effect.

4. This Amendment and obligations of the Stockholders hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of Delaware.

5. If any provision of this Amendment or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Amendment and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

6. This Amendment shall inure to the benefit of and be binding upon the Stockholders and their respective heirs, executors, administrators, legatees, estates, legal representatives, successors and permitted assigns.

7. This Amendment may be executed in several counterparts and each counterpart so executed shall be deemed an original of this Amendment, binding upon the party who executed the same.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first written above.

**BROOKDALE SENIOR LIVING INC.**

By: /s/ T. Andrew Smith  
Name: T. Andrew Smith  
Title: Executive Vice President

**STOCKHOLDERS:**

**FABP (GAGACQ) LP**  
By its General Partner Fortress Fund  
MM II LLC

By: /s/  
Name:  
Title:

**FBIF HOLDINGS LLC**

By: /s/  
Name:  
Title:

**FORT GB HOLDINGS LLC**

By: /s/  
Name:  
Title:

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FORTRESS INVESTMENT FUND IV (FUND A)  
L.P.  
FORTRESS INVESTMENT FUND IV (FUND B)  
L.P.  
FORTRESS INVESTMENT FUND IV (FUND C)  
L.P.  
FORTRESS INVESTMENT FUND IV (FUND D)  
L.P.  
FORTRESS INVESTMENT FUND IV (FUND E)  
L.P.  
FORTRESS INVESTMENT FUND IV (FUND F)  
L.P.  
FORTRESS INVESTMENT FUND IV (FUND  
G) L.P.  
FORTRESS INVESTMENT FUND IV  
(COINVESTMENT FUND A) L.P.  
FORTRESS INVESTMENT FUND IV  
(COINVESTMENT FUND B) L.P.  
FORTRESS INVESTMENT FUND IV  
(COINVESTMENT FUND C) L.P.  
FORTRESS INVESTMENT FUND IV  
(COINVESTMENT FUND D) L.P.  
FORTRESS INVESTMENT FUND IV  
(COINVESTMENT FUND F) L.P.  
FORTRESS INVESTMENT FUND IV  
(COINVESTMENT FUND G) L.P.  
By its General Partner Fortress Fund IV GP  
L.P.  
By its General Partner Fortress Fund IV GP  
Holdings Ltd.

By: /s/  
Name:  
Title:

FORTRESS RIC COINVESTMENT FUND LP  
By its General Partner RIC Coinvestment  
Fund GP LLC

By: /s/  
Name:  
Title:



**FRIT HOLDINGS LLC**

By: /s/  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PRIN HOLDING LLC**

By: /s/  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PRIN 3N HOLDING LLC**

By: /s/  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PRIN 2 HOLDING LLC**

By: /s/  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Drawbridge Special Opportunities Fund Ltd.**

By: /s/  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Drawbridge Special Opportunities Fund LP**

By: /s/  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**FIRST AMENDMENT TO  
BROOKDALE SENIOR LIVING INC.  
OMNIBUS STOCK INCENTIVE PLAN,  
AS AMENDED AND RESTATED**

The Brookdale Senior Living Inc. Omnibus Stock Incentive Plan, as amended and restated effective June 23, 2009, is hereby amended, effective October 30, 2009, as follows:

1. A new Section 3(e) is hereby added to the Plan to read as follows:

“Notwithstanding anything in this Plan to the contrary, all Awards to Non-Employee Directors shall be administered by the Compensation Committee of the Board.”

2. A new Section 16(f) is hereby added to the Plan to read as follows:

“Notwithstanding anything in this Plan to the contrary, each time-based Restricted Share Award (or similar time-based full-value Award) granted hereunder must have a stated vesting or restriction period of not less than three years from the date of grant. The terms of any such Award may provide that the Award shall vest, and the restrictions shall lapse, in installments during the vesting or restriction period; provided, however, that any such Award granted with a three year vesting or restriction period may provide for no more favorable ratable vesting than one-third per year. Notwithstanding anything in this Plan to the contrary, each performance-based Restricted Share Award (or similar performance-based full-value equity Award) granted hereunder must have a stated vesting or restriction period of not less than one year from the date of grant. Notwithstanding anything in this Section 16(f) to the contrary, any Awards granted hereunder may be subject to accelerated vesting as contemplated by the terms of this Plan, as set forth in the applicable Award Document or as otherwise approved by the Administrator. Any restricted stock units that Non-Employee Directors elect to receive in lieu of cash compensation shall not be subject to the foregoing restrictions.”

**EXHIBIT 31.1**

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**

**PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, W.E. Sheriff, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Brookdale Senior Living Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 4, 2009

/s/ W.E. Sheriff  
W.E. Sheriff  
Chief Executive Officer

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EXHIBIT 31.2

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**

**PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Mark W. Ohlendorf, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Brookdale Senior Living Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 4, 2009

/s/ Mark W. Ohlendorf

Mark W. Ohlendorf  
Chief Financial Officer

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**EXHIBIT 32**

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL  
OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED  
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Brookdale Senior Living Inc. (the "Company") for the period ended September 30, 2009, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), W.E. Sheriff, as Chief Executive Officer of the Company, and Mark W. Ohlendorf, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ W.E. Sheriff

Name: W.E. Sheriff  
Title: Chief Executive Officer  
Date: November 4, 2009

/s/ Mark W. Ohlendorf

Name: Mark W. Ohlendorf  
Title: Chief Financial Officer  
Date: November 4, 2009

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DIVIDER IV- 3. Provide Service – Specific  
Revenues and Expenses projected.  
Form MO 580-1865



Certificate of Need Program

**SERVICE-SPECIFIC REVENUES AND EXPENSES**

**Historical Financial Data for Latest Three Years plus Projections Through Three Years Beyond Project Completion**

(Use an individual form for each affected service with a sufficient number of copies of this form to cover entire period, and fill in the years in the appropriate blanks.)

	Year		
	2010	2011	2012
<b>Amount of Utilization:*</b>	13,323	14,600	14,600
<b>Revenue:</b>			
Average Charge**	\$134	\$137	\$142
Gross Revenue	\$1,785,415	\$2,001,660	\$2,071,740
Revenue Deductions	836,400	559,729	212,775
Operating Revenue	949,015	1,441,931	1,858,965
Other Revenue	29,729	35,212	39,249
<b>TOTAL REVENUE</b>	<b>\$978,744</b>	<b>\$1,477,143</b>	<b>\$1,898,214</b>
<b>Expenses:</b>			
Direct Expense			
Salaries	513,569	538,514	557,362
Fees	0	0	0
Supplies	151,218	165,224	171,007
Other	202,615	202,160	209,236
<b>TOTAL DIRECT</b>	<b>\$867,402</b>	<b>\$905,898</b>	<b>\$937,605</b>
Indirect Expense			
Depreciation	147,089	147,089	147,089
Interest***	0	0	0
Overhead****	48,936	73,858	94,911
<b>TOTAL INDIRECT</b>	<b>\$196,025</b>	<b>\$220,947</b>	<b>\$242,000</b>
<b>TOTAL EXPENSE</b>	<b>\$1,063,427</b>	<b>\$1,126,845</b>	<b>\$1,179,605</b>
<b>NET INCOME (LOSS):</b>	<b>-\$84,683</b>	<b>\$350,298</b>	<b>\$718,609</b>

\* Utilization will be measured in "patient days" for licensed beds, "procedures" for equipment, or other appropriate units of measure specific to the service affected.

\*\* Indicate how the average charge/procedure was calculated.

\*\*\* Only on long term debt, not construction.

\*\*\*\* Indicate how overhead was calculated.

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DIVIDER IV- 4. Document how patient charges  
were derived.



IV-4:

The proposed rates for our new assisted living units fit within the range of rates of comparable properties. It is developed based on current assisted living pricing of comparable communities in the Greater St. Louis market. To further examine its affordability by current residents of Hallmark Creve Coeur, we have also compared it to the total fees paid by our residents currently using supportive services provided by third party providers. The proposed assisted living pricing is either at or lower than the total of independent living rental fees plus the \$1,695 monthly supportive service fees paid to the third party provider.

DIVIDER IV- 5. Document responsiveness to the  
needs of the medically indigent.

#### Divider IV 5

The primary purpose of the proposed project is to enable existing residents of the independent living units, who are all private pay, to transition to ALF and not be forced to leave the Hallmark community. Medicaid does not reimburse either independent living or assisted living so our residents have to have the ability to pay for their residency. Hallmark has a long history of working with its residents to enable them to remain in the facility or, if necessary, transition to another facility. An important part of this project is to enable our residents with long term care insurance to access those funds which are usually restricted to licensed long term care facilities.



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By Appointment Only

January 19, 2010

Ms. Donna Schuessler  
CN Program  
P.O. Box 570  
Jefferson City, MO 65102

**Re: Hallmark of Creve Coeur; project #4463 RS**

Dear Donna:

This is to respond to your request for additional information on the above project.

- **The application stated that the initial fill-up of the proposed assisted living facility (ALF) includes 36 residents from the existing independent living (IL) building. Please explain how these residents can currently live in the IL building if they require ALF services.**

Each such resident is currently receiving supportive services, such as medication reminders, standby services, escorts, companionship and assistance with bathing/dressing from independent, third party providers such as home health agencies or private duty nurses. The residents and/or their families must contract on their own and independent of Hallmark with such service providers. Recently, the state determined that other former residents receiving similar services required care in a licensed facility and ordered their removal from Hallmark of Creve Coeur. The applicant believes that many of the remaining residents receiving assistance would be better served in an ALF setting. Many of its residents support this belief and have urged the applicant to seek ALF licensure.

- **Explain how the renovation cost can only be \$8.31 per square foot when the RS Means Cost Data indicates \$116.69 per square foot for renovation for the St. Louis area.**

As shown on the Proposed Project Budget, while the existing facility and land have a value of \$4,448,502, the applicant will only need to spend \$432,945 to renovate 52,130 square feet of renovated space to meet licensure standards, which comes to \$8.31 in renovation costs per square foot. Because the existing building is in such good shape and requires only minor renovation to meet licensure requirements, the renovation costs are substantially below the RS Means.

January 19, 2010  
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If you have any additional questions, please do not hesitate to send them to me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'RDW', with a stylized flourish at the end.

Richard D. Watters

RDW/dk